No. 12,591

IN THE

United States Court of Appeals

For the Ninth Circuit

JOHN H. FAHEY, et al.,
Appellants,

vs.

O'MELVENY & MYERS, W. I. GILBERT, JR., and RICHARD FITZPATRICK,
Appellees,

and

FEDERAL HOME LOAN BANK OF SAN FRANCISCO,
Appellant,

vs.

O'MELVENY & MYERS, W. I. GILBERT, JR., and RICHARD FITZPATRICK,
Appellees.

On Appeal from the District Court of the United States for the Southern District of California, Central Division.

BRIEF FOR APPELLANTS.

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OPINION AND ORDER OF THE DISTRICT COURT.

The oral opinion of the District Court appears at R. 833 and the order appealed from at R. 288.

JURISDICTIONAL STATEMENT.

This is an appeal by the Home Loan Bank Board, the Federal Home Loan Bank of San Francisco, William K. Divers, J. Alston Adams, O. K. LaRoque, John H. Fahey, A. V. Ammann, and George K. Bramley, individually and in their respective representative and official capacities, if any, and the Federal Savings and Loan Insurance Corporation, from an order dated June 19, 1950, directing the Clerk of the Court to pay forthwith out of funds on deposit in the registry of the Court, sums aggregating $75,000.00 as interim allowances of fees to attorneys for plaintiffs in action No. 5678. The order was issued in action No. 5678 which the District Court had consolidated with action No. 5421 into one action (R. 291).

Action No. 5678, hereinafter referred to as the "Los Angeles Action," was instituted by the former Federal Home Loan Bank of Los Angeles and six of its member savings and loan institutions to recover assets transferred by three orders dated March 29, 1946, of the Federal Home Loan Bank Administration, which, among other things, dissolved the Federal Home Loan Bank of Los Angeles and transferred its assets and liabilities to the Federal Home Loan Bank of Portland, renamed the Federal Home Loan Bank of San Francisco, and to declare void said administrative orders. Jurisdiction was based upon allegations that the action arose under the Constitution and laws of the United States and that the

amount in controversy exceeded the sum of $45,000,000.00[1] (12511 R. 9466).

The other consolidated action, No. 5421, hereinafter referred to as the "Mallonee Action," was brought by shareholders of the Long Beach Federal Savings and Loan Association, suing derivatively, with a substantially identical cross-claim by the Association, to oust a conservator appointed on May 20, 1946 for that association by the Federal Home Loan Bank Administration, and for other relief. The Court below is alleged in both the complaint (12511 R. 2961-2962 and cross-claim (12511 R. 3189, 3191) to have jurisdiction by reason of the presence of substantial federal questions and diversity of citizenship. 28 U.S.C. 1331, 1332. It is further alleged that the amount involved is approximately $70,000,000.00 (12511 R. 2962, 3190).

The order from which this appeal is taken was entered in Judgment Book 66 at page 524-545 of

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[1]There is now pending in this Court an appeal, No. 12511, from a preliminary injunction, issued in the consolidated action, enjoining the Home Loan Bank Board from holding an administrative hearing on its order to show cause why the Board should not take administrative action against the Long Beach Federal Savings and Loan Association because of its violation of regulations (12511 R. 8242n). The injunction was based in part upon the Court's finding that its issuance was necessary to protect the Court's jurisdiction to determine the validity of the March 29, 1946 orders (12511 R. 8298). That appeal challenged *inter alia* the jurisdiction of the District Court in the consolidated actions insofar as they relate to the orders of March 29, 1946. Some of the questions involved in that appeal are necessarily present in this appeal and this Court has, therefore, entered its order authorizing reference to the printed record on appeal in No. 12511 (R. 875).

References herein to "12511 R. ....." will be to the printed record in appeal No. 12511. References to "R. ....." will be to the printed record in the instant appeal, No. 12591.

the records of that Court on June 19, 1950 (R. 288, 312). Notice of appeal was filed by appellants on June 20, 1950 (R. 322-323).

This Court has jurisdiction of this appeal under Section 1291 of Title 28 U.S.C.

The order is a "final decision" and therefore appealable. An order to be final need not dispose of the entire controversy; a final disposition of part of a controversy is appealable.

Biggins v. Oltmer Iron Works (7 C.A.); 154 F. (2d) 214;
Kashishke v. Baker (10 C.A.), 144 F. (2d) 384;
Rubert Hernanos Inc. v. People (1 C.A.) 118 F. (2d) 752;
Forgay v. Conrad, 6 How. 201.
Knox National F. L. Association v. Phillips, 300 U.S. 194, 197.

An order allowing and directing payment of attorneys' fees out of funds in court, entered prior to complete determination of the litigation, is appealable.

Trustees v. Greenough, 105 U.S. 527;
Tuttle v. Claflin (2 C.A.) 88 Fed. 122;
Colley v. Wolcott (8 C.A.) 187 Fed. 595;

An order finally directing the payment of costs out of a fund in Court is appealable.

Stillman v. Hart (C. A. Tex.), 126 Fed. 359.

STATEMENT OF THE CASE.

Dissolution of the Los Angeles Bank.

On March 29, 1946 the Federal Home Loan Bank Administration, which by Executive Order No. 9070 exercised the powers of the Federal Home Loan Bank Board (Sec. 17, App. *infra,* p. xix), issued and carried into effect three orders Nos. 5082, 5083 and 5084 (App. *infra,* p. xxi), pursuant to Sections 3, 25 and 26 of the Federal Home Loan Bank Act (App. *infra,* pp. i, xx), readjusting the Eleventh Federal Home Loan Bank District so as to include the territory of the then Twelfth District, disolving the Federal Home Loan Bank of Los Angeles which had served the Twelfth District, transferring its assets and liabilities to the Federal Home Loan Bank of Portland which had served the Eleventh District, and reconstituting the latter as the Federal Home Loan Bank of San Francisco with headquarters at San Francisco, California. These orders expressly determined in substantially the words of Section 26 of the Act that the "efficient and economical accomplishment of the purposes of the Federal Home Loan Bank Act, as amended, will be aided by the action."

The Los Angeles Action.

On August 22, 1946 there was filed in the United States District Court for the Southern District of California an action, the Los Angeles action, in which the Federal Home Loan Bank of Los Angeles and six savings and loan associations, formerly members thereof, were named as plaintiffs, and the "Federal

Home Loan Bank of Portland, sometimes known and referred to as Federal Home Loan Bank of San Francisco," together with John H. Fahey individually and as "Chairman of the Federal Home Loan Bank Board and purportedly serving as Federal Home Loan Bank Commissioner" and numerous does, were named as defendants[2] (12511 R. 9465). The complaint alleged that the three orders were issued without notice or hearing, that the acts done pursuant thereto were "wholly punitive and disciplinary" and were illegal, invalid and void (12511 R. 9470, 9475, 9480); prayed that they be declared and adjudged void and of no effect; that "any and all clouds and purported liens thereby created" upon the assets of the plaintiffs be removed; that the possession of said assets be returned to the plaintiffs; and that the Portland Bank be required to account to the plaintiffs (12511 R. 9493-9495).

The Mallonee Action.

Prior to the institution of the Los Angeles action and on May 27, 1946 there had been filed in the same court an action No. 5421, the Mallonee action, by three shareholders suing derivatively on behalf of the Long Beach Federal Savings & Loan Association, a Federal savings and loan asociation organized and

[2]When by Reorganization Plan No. 3 of 1947, the Home Loan Bank Board succeeded to the powers and functions of the Federal Home Loan Bank Administration, the Home Loan Bank Board and its members were substituted as parties defendant in both actions for John H. Fahey, as Federal Home Loan Bank Commissioner (12511 R. 2546, 9532). Subsequently, and on November 19, 1950, Mr. Fahey died.

existing pursuant to Section 5 of the Home Owners Loan Act (12 U.S.C. 1464). That action, brought against John H. Fahey individually and as Federal Home Loan Bank Commissioner, and others, and based on the grounds that the charges of mismanagement made against the Association's officers were false and known by Fahey to be false, sought to oust A. V. Ammann, appointed by the Federal Home Loan Bank Administration as Conservator for the Association. After removal of the Conservator on January 24, 1948, the action sought an accounting and damages.

In the Mallonee action the plaintiffs and the Long Beach Association, together with the cross-claimants collaborating with them, sought and obtained an injunction against the holding of an administrative hearing (12511 R. 372), provided for under regulations of the Federal Home Loan Administration, at which hearing the propriety of the Conservator's appointment could be contested (24 CFR 148.2). In that action also, on motion of the plaintiffs and the Long Beach Association, the Court enjoined the prosecution of a suit filed in the United States District Court for the Northern District of California by ten Northern California members of the San Francisco Bank "suing on behalf of all said similarly situated members and stockholders" (12511 R. 8362). The object of that suit was an injunction to restrain the San Francisco Bank and its directors from executing a stipulation proposed to be entered

in the consolidated action under which the Los Angeles Bank was to be reestablished (12511 R. 4641, 4658).

Allegations of the invalidity of the March 29, 1946 orders were made in the complaint (12511 R. 3070-3074), as they were in a cross-claim filed by the Long Beach Association (12511 R. 3281), in a third-party complaint of the Association (12511 R. 287), and in a third-party cross-claim of the Los Angeles Bank (12511 R. 564). These allegations in the various pleadings in the Mallonee action are substantially the same as those in the Los Angeles action and need not, therefore, be separately considered.

Out of State Service on Non-resident Appellants.

None of the appellants, except A. V. Ammann the Conservator and Federal Home Loan Bank of San Francisco, were served personally within the State of California in either action. Service of the complaints in the consolidated actions, designated as *in rem* actions for the return of property located in the State of California, was made in Washington, D. C., pursuant to orders for service on non-resident defendants under former Section 118, Title 28 U.S.C. (now Section 1655) (12511 R. 65-68, 4340, 5357, 9502-9510). Service of the so-called "cross-claims in interpleader" was made on non-resident defendants in Washington, D. C. purportedly pursuant to former Section 41 (26), Title 28 U.S.C. (Now Sections 1335, 1397, 2361) (12511 R. 78-80, 445-446).

The Source of the Deposits in the Registry of the Court.

The deposits in Court, out of which payment of fees was directed, arose from various interpleader proceedings in the Mallonee action, each of which was based on a presumption that the order appointing the Conservator was void *ab initio,* that every act performed by the Conservator in the management of the Association was a nullity and was therefore subject to collateral attack.

Borrower Intervention Proceedings.

Title Service Company, a corporation organized and operated by substantially the same persons who were and are officers and directors of the Long Beach Association and which was served as a John Doe defendant in the Mallonee action, filed so-called cross-claims in interpleader in that action alleging that it was trustee under some 8,000 trust deeds securing loans made by the Association with a remaining balance of over $12,000,000.00, that it was faced with conflicting demands, one from the Conservator, requesting it to make reconveyance of title to borrowers on repayment of loans secured by the trust deeds, and the other by the Association directing it not to make such reconveyances, and praying that the Court adjudicate the rights of the adverse claimants. Thereafter borrowers desiring to obtain reconveyances of title on final repayment of loans were required by the Court to intervene in the Mallonee action and to deposit their final payment in the registry of the

Court. The Court orders authorizing the interventions directed the Conservator to deposit in Court all sums paid by the borrower intervenors during the conservatorship, after which the Court directed delivery of the reconveyances. At least 50 such intervention proceedings were conducted in the Mallonee action and $1,641,037.96 of Long Beach Association funds was thus drawn into the registry of the Court (12511 R. 8287-8288).

The Wallis "Interpleader"

On June 12, 1946 one Wallis, a John Doe defendant in the Mallonee action, filed therein a "cross-claim in interpleader," depositing an unendorsed cashier's check for $50,000 payable to himself. The cross-claim alleged that the check had been delivered to him by the Long Beach Association to be used by him for the payment of his and other legal fees and expenses in anticipated litigation with John H. Fahey; that the Association on the one hand and the Conservator on the other were making conflicting demands upon him as to the use of the check, and prayed that he be instructed by the Court as to his rights and duties with respect thereto (12511 R. 86-99).

San Francisco Bank Impound

In May, 1946 the Long Beach Association, acting through the Conservator, borrowed from the San Francisco Bank the sum of $7,300,000.00 (later paid

down to $6,300,000.00) and pledged as security therefor some $12,000,000.00 of its notes and trust deeds and $5,300,000.00 face value of government bonds. On motion made by the Long Beach Association in the Mallonee action the Court on March 13, 1948 entered an order (12511 R. 8399-8525) requiring the San Francisco Bank to deposit in the registry of the Court the notes of the Long Beach Association evidencing the $6,300,000.00 loan together with the United States bonds in the sum of $5,300,000.00 and the notes and trust deeds which had been pledged as collateral.

On motion of the Long Beach Association, the Court on March 26, 1948 entered an order releasing to the Association the notes and trust deeds then amounting to more than $8,000,000.00 theretofore deposited in the Court's registry pursuant to its order of March 13, 1948, lifting the lien of the San Francisco Bank thereon, and transferring the lien to so much of the funds then in the registry of the Court under the borrower-intervenor proceedings as would make the difference between $5,300,000.00 (the face value of the bonds in the registry) and $6,324,098.35 (the amount of principal and interest due as of March 10, 1948 on the Association's notes to the San Francisco Bank) plus interest on $6,300,000.00 from March 10, 1948 until paid (12511 R. 8526-8536).

The Turner "Interpleader"

On January 29, 1948 after the termination of the Long Beach Association conservatorship, one George

Turner, a John Doe defendant in the Mallonee action, filed a so-called "cross-claim in interpleader," alleging certain undefined conflicting claims to rentals due from him under a lease of real property from the Association. He deposited in the registry of the Court the sum of $11,515.87, the amount of rentals then alleged due, and from time to time as additional rentals became due filed supplemental "interpleaders" depositing additional sums in the Court's registry (12511 R. 3461, 3872, 8138). At the date of the order appealed from the amount of rentals so "interpleaded" and drawn into the registry of the Court was $18,503.52 (R. 306).

Insurance Premium "Interpleaders"

In April 1949 the Association, claiming conflicting demands by the Federal Savings and Loan Insurance Corporation on the one hand and the Association shareholders on the other, was permitted by the Court to "interplead" in the Mallonee action and deposit in the registry of the Court the sum of $24,374.06, the amount of insurance premiums claimed by the insurance corporation, which was required by statute to insure the accounts of the Association (12 U.S.C. 1726(a)). As succeeding installments of insurance premiums fell due, the Association filed supplemental "interpleaders" in the Mallonee action depositing in the registry of the Court the amount of the premium installments. At the date of the entry of the order on appeal the amount of insurance premiums so "interpleaded" and drawn into the registry of the

Court was $55,485.25 (12511 R. 6767, 6920, 6965; R. 306).

The Order on Appeal.

The order appealed from (R. 288-312) was issued pursuant to motion filed on January 5, 1949 by the plaintiffs in the Los Angeles action (12511 R. 5698-5700). The motion was based on the grounds that the Federal Home Loan Bank of Los Angeles had no funds with which to pay its attorneys "since all of its assets are in the possession of the Federal Home Loan Bank of Portland," and that the association plaintiffs "have a beneficial interest in the assets of Los Angeles Bank now in possession of said defendant Federal Home Loan Bank of Portland sufficient to entitle them, and each of them, to the payment out of said assets of the fees of their attorneys."

The order directed payment by the Clerk to Messrs. O'Melveny & Myers, and Richard FitzPatrick, attorneys for Los Angeles Bank and for five of the association plaintiffs, of attorneys' fees in the amount of $67,500.00 for services theretofore rendered in the Los Angeles action; and to W. I. Gilbert, Jr.,[3] attorney for the sixth association plaintiff, fees in the amount of $7500.00 for services theretofore rendered in the consolidated actions. The order provided that the payment be made "out of funds and

[3]On September 12, 1949, pursuant to order (12511 R. 7191) W. I. Gilbert, Jr., Esq., was substituted for Messrs. O'Melveny & Myers and Richard FitzPatrick, Esq., as attorneys for the Wilmington Savings and Loan Association, one of the association plaintiffs in the Los Angeles Action. The Wilmington Association filed a separate motion for an attorney's fee (12511 R. 8909).

moneys heretofore deposited and now on deposit in the Registry of the Court in the above entitled consolidated actions" and that "the amounts ordered hereby paid generally from the funds in the Registry of the Court are not by the terms of this Order, imposed, allocated or assessed upon or against any specific party or parties, fund or funds, provided, however, that it is hereby determined and ordered that the amounts, or any part thereof, herein allowed and ordered paid from said funds shall never be allocated against or imposed upon funds or assets owned by or belonging to the Long Beach Federal Savings and Loan Association, or any of its shareholders, members or stockholders, either individually, or as an association, except as such association shall be required to bear as a member-shareholder only of a Federal Home Loan Bank. The intention being that the services for which fees are herein allowed are primarily for the benefit of said Los Angeles Bank and its association member-shareholders as distinguished from the Long Beach Association and other parties as separate entities or parties." The order further provided "that Long Beach Association shall not at any time be required to deposit any additional money or property in Court in these consolidated actions upon or because of the payment of all or any portion of the sums herein ordered and directed to be paid."

The Present Status of the Actions.

Answers to the complaints in both cases and to the various cross-claims in the Mallonee Action

have been filed by the appellants (12511 R. 4024, 4057, 5056, 5063, 5073, 5102, 9540). The answers placed in issue the material allegations of the complaints and cross-claims, denied the alleged invalidity of the orders of March 29, 1946, and asserted the right and title of the San Francisco Bank to the assets transferred to it by the orders. No date for trial has been set and the issues raised by the pleadings remain undecided.

QUESTIONS PRESENTED.

1. Whether the orders of March 29, 1946, readjusting the 11th Federal Home Loan Bank District and dissolving the Los Angeles Bank invaded any legally protected private rights of the bank or its members so as to give them standing to sue.

2. Whether out-of-state service of process on the members of the Home Loan Bank Board and other non-resident appellants under either Section 1655 or Section 2361 of Title 28, U.S.C. gives the Court jurisdiction to invalidate the orders of March 29, 1946.

3. Whether the allegations of the Los Angeles complaint that there was a failure to afford a hearing and make findings thereon or that the orders were issued for improper motives give the court jurisdiction to review the orders.

4. Whether the complaint fails to state a claim within the jurisdiction of the Court either (a) be-

cause the action constitutes a collateral attack upon administrative orders; or (b) because the orders are valid until duly set aside in an appropriate proceeding.

5. Whether the consolidated actions insofar as they seek to invalidate the orders of March 29, 1946, constitute an unconsented suit against the United States.

6. Whether prior to trial and a determination of the merits of this action, claimed by plaintiffs to be *quasi in rem* and claimed by defendants to be in personam, the Court is authorized to award attorneys' fees to plaintiffs' attorneys.

7. Whether in this action to recover property, based upon the alleged invalidity of the orders of March 29, 1946, the right and title to which property is in dispute between the plaintiffs and the defendants, the Court is authorized to award attorneys' fees out of such property.

8. Whether the deposits in Court are unavailable for payment of fees allowed to attorneys for the Los Angeles bank and its plaintiff shareholders (a) because they do not constitute funds "created, preserved or protected" by the plaintiffs; or (b) because the proceedings as a result of which the deposits were made constitute an impermissible collateral attack upon administrative orders; or (c) because the attorneys' fees are not alleged to have been earned in any of the intervention or interpleader proceedings in which the deposits were made; or

(d) because the order by its terms precludes payment out of any funds of Long Beach Association, and there are no other funds available for such payment.

SPECIFICATION OF ERRORS.

(1) The Court erred in determining that it had or has jurisdiction of the consolidated actions No. 5678 and 5421, or either of them, and its Findings of Fact and Conclusions of Law to that effect are erroneous.

(2) The Court erred in determining that it had jurisdiction in the consolidated actions over the persons of the Home Loan Bank Board, John H. Fahey, individually and as a Federal Home Loan Bank Commissioner, and Federal Savings and Loan Insurance Corporation, either

(a) on the ground that the actions are brought under 28 U.S.C. 1655, or

(b) by reason of the various subjoined and subsidiary interpleader or intervention proceedings, or

(c) by reason of any general appearance having been made on behalf of said parties, or

(d) by virtue of determinations by the District Court in previous orders entered in the consolidated actions that it has jurisdiction,

and its findings of fact and conclusions of law to the contrary are erroneous.

(3) The Court erred in determining that the legal services rendered by O'Melveny & Myers, Richard FitzPatrick, and W. I. Gilbert, Jr. have inured to the benefit of their respective clients so that they are now compensable, and Findings of Fact Nos. 14, 15, 16, 17, 18 and 21 are erroneous.

(4) The Court erred in determining that O'Melveny & Myers, Richard FitzPatrick, and W. I. Gilbert, Jr. are entitled to recover attorneys' fees upon their motion therefor and in fixing the amount of such fees.

(5) The Court erred in directing payment of such attorneys' fees out of funds and monies on deposit in the registry of the Court in the consolidated actions; and the Court especially erred in directing payment generally out of funds in the registry of the Court without designating the particular fund or funds from which the payment should be made, or the party or parties upon whom the burden of payment is to rest.

(6) The Court erred in exempting Long Beach Association and its property from the burden of contributing to the payment of said judgment while adjudicating that all other parties to the litigation and all other claimants to the funds on deposit in the registry of the Court are potentially liable for the payment of the same as may be determined in subsequent adversary proceedings which the Court reserves power to conduct.

SUMMARY OF ARGUMENT.

The order awarding attorneys' fees should be reversed because the District Court is without jurisdiction of the Los Angeles action in connection with which the award was made, as well as because of the absence of any legal basis upon which the award could be made.

I.

The Los Angeles action does not present a claim within the jurisdiction of the District Court. Neither the Los Angeles Bank nor its shareholder plaintiffs had any justiciable right which could be adjudicated by a Federal Court. The shareholders had no standing to sue because none of their legally protected rights was invaded by the orders of March 29, 1946, which readjusted the 11th and 12th Federal Home Loan Bank districts and consolidated the Los Angeles and Portland banks. The Los Angeles Bank had no standing to sue because, being an instrumentality of the United States performing solely governmental functions, it had no justiciable right to the continuance of its existence.

Further, the administrative action complained of is not subject to judicial review because it was the exercise of legislative authority properly delegated to the Board and involved determinations which the Act provided could be made only by the Board. This is not altered by the fact that the orders complained of were issued without notice, hearing or formal findings. The statute does not require such

hearing or findings and there exists no constitutional right of the plaintiffs to such hearing.

The Home Loan Bank Board and its members are indispensable parties to the maintenance of the Los Angeles action because no effective relief could be granted without compelling action by the Board. Valid service upon the Board and its members has not been had. Finally, the action is an unconsented suit against the United States because it seeks to compel official action by the Home Loan Bank Board, a branch of the Executive Department of the Government.

II.

The order awarding attorneys' fees cannot be sustained for the reason that it does not fall within any of the limited exceptions to the general rule that plaintiffs may not recover attorneys' fees from other parties to the litigation. This is not a case where a fiduciary is put to expense in defending an unfounded suit or in administering or protecting trust property. This is not a case where the plaintiffs have either recovered or preserved a fund for the benefit of a class. This is not an action *in rem* where fees may be allowed for services rendered directly to the Court or its representative. This is not a case resisting an application for the appointment of a receiver for a corporation, in which attorneys' fees may under some circumstances be allowed out of the undisputed property of such corporation.

This is a suit where the plaintiffs, attacking the validity of Governmental orders, valid on their face, seek to recover property, the right and title to which is claimed by the defendant, and seek attorneys' fees before a determination on the merits has been made. The plaintiff may not recover attorneys' fees out of the funds in dispute.

III.

In no event was the Court authorized to award attorneys' fees out of funds deposited in the registry of the Court. Such funds are improperly in Court because they result from impermissible collateral attacks upon administrative action. They are, therefore, not subject to disbursement by the Court.

Finally, the order awarding attorneys' fees cannot be sustained because the deposits out of which the fees are ordered paid were made in proceedings at most "in the nature of interpleader," and attorneys' fees may not be paid out of such deposits.

STATUTES AND ADMINISTRATIVE ORDERS INVOLVED.

The pertinent parts of the Federal Home Loan Bank Act (12 U.S.C. 1421), as well as the orders herein involved, are set forth in the Appendix, *infra,* pp. i to xxv. References in this brief to the statute and orders will designate the appropriate pages of the appendix.

ARGUMENT.

INTRODUCTION.

The order involved in this appeal, allowing to attorneys for the former Federal Home Loan Bank of Los Angeles and some of its member-shareholders fees in the amount of $75,000.00 and directing that it be paid out of funds on deposit in the registry of the Court, is without precedent in the law, contrary to public policy, and is not maintainable on any principles of justice or equity. The practical effect of the order is to require the defendant in an action, prior to trial and without final determination of any of the issues of fact or law involved, to compensate plaintiffs' attorneys for services rendered in prosecuting the case.

In support of appellants' contention that the order appealed from should be reversed, we will show

(a) In part I that the order appealed from cannot be sustained for the reason that the action in which it was entered fails to present a claim for relief within the jurisdiction of the Court below.

(b) In part II that apart from general jurisdictional objections, the Court did not have authority to award attorneys' fees to plaintiffs' attorneys or require their payment by any adverse party to the litigation.

(c) In part III that the Court did not have authority to direct the payment of attorneys' fees out of funds in the registry of the Court, since the funds

were improperly drawn into court through impermissible collateral attack on administrative action, are not legally chargeable with the attorneys' fees, and are not owned by parties who are liable for their payment.

I.

THE ORDER APPEALED FROM CANNOT BE SUSTAINED FOR THE REASON THAT THE ACTION IN WHICH IT IS ENTERED FAILS TO PRESENT A CLAIM FOR RELIEF WITHIN THE JURISDICTION OF THE FEDERAL COURTS.

As is shown below, the District Court is without jurisdiction of the Los Angeles action. Lacking jurisdiction, the Court had no authority to award attorneys' fees for the attorneys prosecuting the action. *Dubil v. Rayford Camp & Co.,* 184 F. (2d) 899 (9 C.A.); *Vicksburg, S. & P. Ry. Co. v. Nattin,* 54 F. (2d) 712 (D.C.).

(1) NEITHER THE FORMER SHAREHOLDERS OF THE LOS ANGELES BANK NOR THE BANK ITSELF HAVE STANDING TO MAINTAIN THE LOS ANGELES ACTION.

Plaintiffs' action is predicated on the erroneous assumption that the former Los Angeles Bank and its members have legal rights identical with those possessed by a private corporation and its stockholders. The fact that the Los Angeles Bank was an instrumentality of the United States and that its members possessed only the limited rights prescribed by statute is overlooked or ignored.

The rights and interests of members of a Federal Home Loan Bank are vastly different from those of stockholders of a private corporation. As is more fully shown herein the peculiar public and governmental nature of a Federal Home Loan Bank and the incidents of membership therein are such that the acts complained of by plaintiffs in this action do not in fact result in injury to any legally protected rights of plaintiffs. Thus neither the plaintiff former bank as such nor the plaintiff members have standing to sue. *Perkins v. Lukens Steel Co.,* 310 U.S. 113; *Tennessee Electric Power Co. v. TVA,* 306 U.S. 118; *Alabama Power Co. v. Ickes,* 302 U.S. 464; *Massachusetts v. Mellon,* 262 U.S. 447.

(a) Plaintiff members of the former Los Angeles Bank have no standing to maintain this action.

By the orders of March 29, 1946, the former 11th District, consisting of the States of Idaho, Montana, Oregon, Utah, Washington and Wyoming and the Territory of Alaska, was consolidated with the former 12th District, consisting of the States of Arizona, California, Nevada and the Territory of Hawaii (App. *infra* p. xxiv). Prior to the consolidation, California associations and particularly the associations of Southern California had been in a position to elect at least half of the Board of Directors of the former Los Angeles Bank. Since the consolidated district contains, besides the territories, nine states, each of which is under regulations entitled to one elected

director,[4] Southern California Associations lost the power which they had theretofore exercised in the 12th District. Indeed that loss of power is one of the allegations upon which the Los Angeles complaint rests (12511 R. 7479). As Judge Hall pointedly described this litigation in his memorandum opinion (R. 834), "It is a quarrel apparently over power".

But the loss of the power theretofore exercised by Southern California associations resulted not from the transfer of assets from the Los Angeles Bank to the San Francisco Bank, but solely and entirely from the readjustment of the 11th and 12th Federal Home Loan Bank Districts. The effect on the power of the Southern California associations would have been identical if, upon the consolidation of the two districts, the Portland Bank had been dissolved and its assets transferred to the Los Angeles Bank, and the latter, retaining all its assets, thus had become the bank for the consolidated district.

Readjustment of Federal Home Loan Bank Districts, specifically authorized by Section 3 of the Federal Home Loan Bank Act (App. *infra* p. i) however is the exercise of a purely governmental power in which no association has a justiciable interest. *Mt. Pleasant v. Beckwith,* 100 U.S. 514; *Hunter v. Pittsburgh,* 207 U.S. 161; *Commissioners of Laramie*

[4]There are only eight elected board members and the board has treated the States of Arizona and Nevada as one for this purpose and has not accorded minimum representation to the two territories (App. *infra,* p. xxiii).

County v. Commissioners of Albany County, 92 U.S. 307.

The fortuitous circumstances of the original districting by which California associations had the power to elect at least half of the directorate of a bank created no right to the continuance of such power. The statute itself denies such right. It authorizes the board, without the consent of any bank or any member association, to readjust districts, and readjustment would inevitably result in a change of voting power. The loss of the power did not therefore result from the invasion of any legally protected right of the California associations. *Sprunt & Son v. United States,* 281 U.S. 249; *Edward Hines Yellow Pines Trustees v. United States,* 263 U.S. 143, 147, 148; *United States v. Merchants & Manufacturers Traffic Assn.,* 242 U.S. 178, 188.

Nor were private rights otherwise invaded by the orders. The rights and incidents of membership in a Federal Home Loan Bank are specified and limited by the Federal Home Loan Bank Act and are not equivalent to the rights of a shareholder of a proprietary corporation. Such membership is available to any building and loan association or similar institution which can qualify under the provisions of the Act (Sec. 4, 5; App. *infra,* pp. i, iii). Membership is subject to approval of the Home Loan Bank Board (Sec. 4, 5) and "the Board may, after hearing, remove any member from membership, * * * if, in the opinion of the Board, such member * * * has failed to

comply with any provision" of the Act or the Board's regulations pursuant thereto (Sec. 6(i), App. *infra,* p. viii). An eligible institution may become a member only of the Federal Home Loan Bank of the district in which is located the institution's principal place of business or under some circumstances of an adjoining district (Sec. 4(b), App. *infra,* p. ii).

Each member of a Federal Home Loan Bank is now required by the Act to invest and keep invested in stock of the bank an amount equal to 2% of the unpaid principal of its outstanding home mortgage loans (Sec. 6(1), App. *infra,* p. ix). The amount of capital investment required of each member is readjusted by the Home Loan Bank Board from time to time, and a member may request the retirement of stock in excess of that required and the return of its excess capital (Sec. 6(c), App. *infra,* p. iv). A member, other than a federal association, may withdraw from membership and secure the return of the amount subscribed for stock after payment of outstanding indebtedness to the bank (Sec. 6(i), App. *infra,* p. viii). Stock subscribed for by a member may not be hypothecated or transferred, except that with the consent of the Board stock may be transferred to another member or one eligible to membership (Sec. 6(h), (j), App. *infra,* pp. viii, ix).

Transfer of membership of member associations from the Los Angeles Bank to the San Francisco Bank, effected by Order No. 5082, invaded no right of the association plaintiffs because their rights are

limited by the statute. Whatever statutory right a bank shareholder has to be a member of *some* bank, it acquired and has no legal right to continue its membership in any *particular* bank. For when the statute vested in the board the power to dissolve a bank (Sec. 25, App. *infra,* p. xx), it specifically denied to the members any right to maintenance of membership in a particular bank.

Substitution of stock in the San Francisco Bank for stock in the Los Angeles Bank invaded no right of plaintiff associations. Purchase of bank stock is a condition of bank membership and does not confer a proprietary interest of any kind in the bank (*Peoples Bank v. Federal Res. Bk. of S. F.,* 58 F. Supp 25). The substitution of stock ownership in the San Francisco Bank for that in the Los Angeles Bank therefore affected no property right of the Association plaintiffs in the Los Angeles Bank. They had none.

Further, the power of the board so to substitute is indispensable to the exercise of the statutory power to readjust districts and to dissolve a bank. For there must be one and only one bank to a district. (Sec. 3, App. *infra,* p. i). Whatever right a state-chartered association has to remain a member of a bank could then, upon dissolution of the bank, be preserved only by transfer of its membership and stock ownership incident thereto to an existing bank in the district. Otherwise, dissolution would mean expulsion. Its right voluntarily to withdraw from membership

remains unaffected, because that right continues to exist under exactly the same conditions as it did before the transfer. Likewise the duty of Federal associations to be and remain a member could, upon dissolution of a bank, be enforced only by such transfer of its bank membership. Otherwise, it would cease to be a member of a bank, and such membership is mandatory (Sec. 5(f) Home Owners Loan Act; 12 U.S.C. 1464(f)).

The limited property rights they had in their shares of stock were in nowise impaired by the orders in controversy since their rights, defined by statute, remained unchanged. There is no allegation that any plaintiff member was denied those rights by the San Francisco Bank. And nowhere is it alleged that the San Francisco Bank cannot or has failed to accord to its members, including the association plaintiffs, all the services and facilities for which under the statute a home loan bank is organized and operates.

The transfer to the San Francisco Bank of the collateral for loans and the cash and bonds of the stockholders of the former Los Angeles Bank invaded no legal right of the shareholders of the former Los Angeles Bank. The deposits were made as an incident to membership, membership which, as is shown above, was subject to transfer by the Board. The legal right of the plaintiff shareholders was no more invaded by the transfer of securities from the Los Angeles Bank to the San Francisco Bank than it would have been by a transfer from one department

of the Government to another. In fact, so far as the member associations are concerned, the consolidation was, in effect, nothing more than a change of name of a government instrumentality which continued to hold their pledges and bailments under the same terms and conditions as before. In any event, nowhere is it alleged that plaintiffs made any demand for the return of their pledged or bailed property or that said return was refused by the San Francisco Bank. No "controversy" exists therefore as to such property.

(b) The former Los Angeles Bank has no standing to maintain this action.

Federal Home Loan Banks are not private corporations. They are instrumentalities of the United States established to carry out important governmental functions and therefore have no justiciable interest in their continued existence. Which agency of the United States shall exercise a governmental function is a question of general interest, common to all members of the public (cf. *In Re Levitt,* 302 U.S. 633). Each Federal Home Loan Bank established by the Board pursuant to the Federal Home Loan Bank Act, although organized in corporate form, exists solely as an instrument performing functions and exercising powers vested in the Government of the United States and not as a corporation created for private purposes or private profit. Its primary function is to provide, subject to the direction and control of the Home Loan Bank Board, reserve

banking facilities for savings and loan associations and similar institutions within its district (Sec. 10, 12 U.S.C. 1430). Each such bank is an integral and essential part of the financial system created by Congress through the Federal Home Loan Bank Act and the Home Owners' Loan Act of 1933 to promote home ownership and to provide adequate home financing.[5]

The statutory scheme providing for regional reserve banks to service institutions engaged in the field of home mortgage financing under the supervision and control of a central administrative agency is patterned after and closely follows the plan embodied in the Federal Reserve System for banks generally (12 U.S.C. 221) and the Federal Farm Loan Act for farm mortgages (12 U.S.C. 641). Judicial expressions of the nature and functions of the regional reserve banks established by the two earlier Acts are, by reason of the close similarity of plan and purpose, pertinent to the present inquiry. Thus it is clear that any such reserve bank created pursuant to a Congressional act is a government instrumentality and "every function" which it performs is governmental. *Federal Land Bank v. Bismarck Lumber Co.,* 314 U.S. 95, 102; *Smith v. Kansas City Title and Trust Co.,* 255 U.S. 180; *Federal Land Bank v. Gaines,* 290 U.S. 247.

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[5]No attack is made by plaintiffs upon the constitutionality of the Federal Home Loan Bank Act.

Under the Federal Home Loan Bank Act, the Home Loan Bank Board is vested with sole responsibility for the organization, reorganization and integration of the home loan bank system. The Board is required to divide the nation into districts, to establish a Federal Home Loan Bank for each such district and to determine the location of its principal office (Sec. 3, App. *infra,* p. i). The Board has specific power to delineate and readjust districts and to create new districts (Sec. 3) and to dissolve, liquidate or reorganize a Federal Home Loan Bank (Sec. 25, 26, App. *infra,* p. xx).

In addition, the Board is empowered without the consent of any bank or its members to issue consolidated debentures or bonds which are the joint and several obligations of all Federal Home Loan Banks, and to require the several banks to rediscount mortgages held by one bank or to make inter-bank loans or deposits. (Sec. 11, App. *infra,* p. xiii). The Board is also empowered to reject applications for membership in a bank and to "remove any members from membership" (Sec. 4(a), 6(i), App. *infra,* pp. i, viii). Four of each bank's directors are appointed by the Board, and the Board prescribes the rules and regulations under which the other eight directors are elected by member associations, each of which has one vote regardless of the number of shares it holds. The chairman and vice-chairman of the board of directors are designated by the Board (Sec. 7, App. *infra,* p. x). The Board's power of supervision and

control extends to the approval of the selection, employment and compensation of officers, employees, attorneys and agents. (Sec. 12, App. *infra,* p. xvi), and the Board has "power to suspend or remove any director, officer, employee or agent of any Federal Home Loan Bank" (Sec. 17, App. *infra,* p. xix). Indeed every power which a bank may exercise is "subject to the approval of the Board" (Sec. 12, App. *infra,* p. xvi).

That a Federal Home Loan Bank is a government instrumentality and not a proprietary corporation is further confirmed by the fact that "its franchise, its capital, reserves, and surplus, its advances, and its income shall be exempt from all taxation now or hereafter imposed by the United States, or by any Territory, dependency or possession thereof, or by any State, county, municipality or local taxing authority" (Sec. 13, App. *infra,* p. xvii).[6]

A Federal Home Loan Bank is an instrumentality of the United States, exercises only governmental powers, and can therefore have no proprietary interest in its continued existence. This is particularly true where, as here, the supervising authority, i.e., the Home Loan Bank Board, has specific statutory authority to adjust bank districts and to dissolve, liquidate or reorganize a Federal Home Loan Bank (Secs. 25, 26, App. *infra,* p. xx).

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[6]See *Federal Land Bank v. Priddy,* 295 U.S. 229; *Federal Land Bank v. Bismarck Lumber Co.,* 314 U.S. 95; *Pittman v. Home Owners' Loan Corporation,* 308 U.S. 21, 32.

The complaint in this action seeks to recover for the former Los Angeles Bank assets transferred by Order No. 5082 to the San Francisco Bank. The basis for the relief sought is that its proprietary right in its existence has been violated. As we have shown, it had no such right. A Federal Home Loan Bank as an instrumentality of the United States performing only governmental functions has no more proprietary right in its continued existence than does a municipal corporation as an agency of a state. As Mr. Justice Moody said in *Hunter v. Pittsburgh*, 207 U.S. 161, at 178:

> "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in

other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest."

The conclusion is inevitable that no legally protected private rights of either the Los Angeles Bank or its members have been violated and the District Court, therefore, had no jurisdiction of the Los Angeles action.

(2) THE ADMINISTRATIVE ACTION COMPLAINED OF IS NOT SUBJECT TO JUDICIAL REVIEW.

We have shown in the preceding subsection (1) that the complaint fails to disclose a justiciable controversy, since Orders Nos. 5082, 5083 and 5084, upon the alleged invalidity of which the action is based, do not adversely affect any legally protected right of the plaintiffs. The claim presented is non-justiciable for the further reason that the orders under attack are of such a nature that they are not subject to judicial review.

The Federal Home Loan Bank Act does not provide for judicial review and if such right is available it must be under principles established by the courts.[7]

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[7]It cannot be successfully contended that the Administrative Procedure Act (5 U.S.C. 1001 etc.) affords any right to judicial review in this case. Since Section 10 of the Act relating to judicial review did not become effective until September 11, 1946, which was subsequent to the agency action complained of and the filing of this action, the Act is inapplicable to this case. Other cases pending at

The Courts have consistently denied review of the basis upon which action has been taken by an administrative agency in cases where as here Congress has authorized the Board "to take some specified legislative action when in its judgment that action is necessary or appropriate to carry out the policy of Congress" (*U.S. v. Bush & Co.,* 310 U.S. 371); or where the facts on which action must be taken "can only be known to an official or a body having wide experience in such matters and ready access to the means of information," (*Williamsport Wire Rope Co. v. United States,* 277 U.S. 551, 561) or are "delicate, complex, and involve large elements of prophecy," (*Chicago & S. Airlines v. Waterman S.S. Corp.,* 333 U.S. 103, 111),[8] or where the decision must

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the time the Administrative Procedure Act went into effect have been decided without reference to it. *United States v. Ruzicka,* 329 U.S. 287 (1946); *Board of Governors of the Federal Reserve System v. Agnew,* 329 U.S. 441 (1947); *Krug v. Santa Fe Pacific Rd. Co.,* 329 U.S. 591 (1947); *Patterson v. Lamb,* 329 U.S. 539 (1947); Attorney General's Manual, Administrative Procedure Act, pp. 93-94. In any event the Act affords no ground for judicial control of the discretionary power of the Board to create and adjust districts and to liquidate or reorganize Federal Home Loan Banks. The right of review granted by that Act runs to "any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute". But as has been shown, the plaintiffs had no legal right which was affected by the adjustment of districts or by the liquidation of the Los Angeles Bank. See *supra,* pp. 23-35.

Section 10 of the Act exempts from the review provision action which is by law committed to agency discretion. 5 U.S.C. 1009. As shown herein, *infra,* pp. 37-38, the establishment and readjustment of districts and the establishment and liquidation of banks is by law committed to the discretion of the Board and involves matters beyond the competence of the Courts.

[8]It is interesting to note that Section 26 of the Federal Home Loan Bank Act requires a "finding" of what a condition *will be* in the future. Such a "finding" can be only a prophecy.

be based on "an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions,—impressions which may lie beneath consciousness without losing their worth" (*Chicago, B. & Q. R. Co. v. Babcock,* 204 U.S. 585, 598).

In carrying into effect the objectives of the Federal Home Loan Bank Act, broad legislative powers were conferred upon the Federal Home Loan Bank Board. The Board was authorized to "divide the continental United States * * * into not less than eight or more than twelve districts * * * with due regard to the convenience and customary course of business of the institutions eligible" to membership, and to establish a Federal Home Loan Bank in each District. The duties thus conferred were to be of a continuing nature. The Board was authorized "from time to time" to readjust such districts and create new districts (Sec. 3) and to "liquidate or reorganize any Federal Home Loan Bank," "whenever the Board finds that the efficient and economical accomplishment of the purposes of [the] Act will be aided by such action" (Sec. 26). The Act provides that each Federal Home Loan Bank shall have existence until dissolved by the Board or by Congress (Sec. 25). These powers are legislative. The Congress might itself have performed them but, for reasons of legislative efficiency, they were delegated to an administrative agency.[9]

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[9]That the administrative action complained of is essentially legislative and political in character is strongly indicated by the

If, therefore this legislative function were to be subject to review or revision by the Courts, the effect would be "to substitute the determination of the Court for the determination which Congress intended should be made by the" Board. *Red River Broadcasting Co. v. F.C.C.,* 98 F. (2d), 282, 287; see *Marshall v. Pletz,* 317 U.S. 383, 388; *Tagg Bros. & Moorhead v. United States,* 280 U.S. 420, 444. The Court would then have to weigh and measure the innumerable factors, economic and other, which would be involved. It would have to determine the effect of liquidation or reorganization, not merely on one bank or two banks, but upon the entire Federal Home Loan Bank system. For as shown, *supra,* p. 32, each bank is but part of an integrated national system, and by the statute, the determining factor for liquidation or reorganization of a bank is the effect on the entire system (Sec. 26). The Court has neither the aptitude nor the facilities to discharge such a responsibility. *Chicago & S. Airlines v. Waterman S.S. Corp.,* 333 U.S. 103.

The fact that an administrative determination is final and conclusive does not of itself make the order reviewable. (*Switchmen's Union v. National Mediation Board,* 320 U.S. 297, 303; *Louisiana v. McAdoo,* 234 U.S. 627, 633). Moreover, an order not otherwise subject to judicial review is not rendered

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fact these plaintiffs and other collaborating parties have injected into the record of these proceedings evidence of application to Congress for the same relief sought here through two separate hearings before Congressional Committees, the report of one of which has been filed by the plaintiffs (R. 292) and the other of which is still in progress.

reviewable by the allegation that it was not justified by the facts. As the Court observed in *Dakota Central Tel. Co. v. South Dakota,* 250 U.S. 163, 184:

> "The proposition that the President, in exercising the power [to take over telephone lines and fix rates], exceeded the authority given him, is based upon two considerations: First, because there was nothing in the conditions at the time the power was exercised which justified the calling into play of the authority; * * *. But as the contention at best concerns not a want of power, but a mere excess or abuse of discretion in exerting a power given, it is clear that it involves considerations which are beyond the reach of judicial power."

The allegation that improper motives prompted the promulgation of the orders, that their purpose was "wholly punitive and disciplinary and not otherwise", do not subject the orders to judicial review. For, "if the order is justified by a lawful purpose, it is not rendered illegal by some other motive in the mind of the officer issuing it." *Isbrandtsen-Moller Co. v. United States,* 300 U.S. 139, 145.

(3) THE FACT THAT THE ADMINISTRATIVE ORDERS COMPLAINED OF WERE ISSUED WITHOUT NOTICE, HEARING OR FORMAL FINDINGS, DOES NOT CREATE A JUSTICIABLE ISSUE.

The Federal Home Loan Bank Act does not require as a condition precedent to the agency action involved in orders Nos. 5082, 5083 and 5084 any notice, hearing or formal findings of fact, nor is there any such requirement under general law with respect to actions of the character here involved.

In performing functions of a legislative character, as distinguished from functions of a judicial nature directly affecting the personal or property rights of individuals or concerns, an administrative agency may, in the absence of statutory restrictions, ascertain in any manner it sees fit the facts constituting the basis for its action, and notice, formal hearings and specific findings of fact are not necessary. *Pacific States Box and Basket Co. v. White,* 296 U.S. 176, 186; *Buttfield v. Strahan,* 192 U.S. 470; *Borden Farm Prod. Co. v. Baldwin,* 293 U.S. 194; *Martin v. Wolfson,* 218 Minn. 557, 16 N.W. (2d) 884; *H. F. Wilcox Oil and Gas Co. v. State,* 162 Okla. 89, 19 Pac. (2d) 347; *Miles City v. State Board of Health,* 39 Mont. 405, 102 Pac. 696; *Commonwealth v. Sisson,* 189 Mass. 247, 75 N.E. 619.

It is well settled that when an administrative tribunal, in the exercise of delegated powers, reorganizes or alters governmental agencies, political instrumentalities or subdivisions, it is acting in a legislative capacity, and the principle of procedural due process is not available to those affected thereby. *Commissioners of Laramie County v. Commissioners of Albany County, supra,* 92 U.S. 307; *Mt. Pleasant v. Beckwith, supra,* 100 U.S. 514; *Hunter v. Pittsburgh, supra,* 207 U.S. 161; *Pawhuska v. Pawhuska Oil & Gas Co.,* 250 U.S. 394; *Trenton v. New Jersey,* 262 U.S. 182; *McDonough v. Goodcell,* 13 Cal. (2d) 741, 91 P. (2d) 1035; *School District No. 3 v. Callahan,* 237 Wis. 560, 297 N.W. 407.

The recent decision in *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, is consistent with

the foregoing cases. In the *Joint Anti-Fascist* case justiciability was found to consist of an alleged injury to a legally protected right; i.e., to be free from defamatory statements (341 U.S. at 139-41, 143, 159-60). Of course no comparable ground for justiciability exists here.

In our view the following language from the opinion of Mr. Justice Frankfurter in the *Joint Anti-Fascist* case is applicable to the administrative order involved here (341 U.S. at 167):

> "Again, when decisions of administrative officers in execution of legislation turn exclusively on considerations similar to those on which the legislative body could itself have acted summarily, notice and hearing may not be commanded by the Constitution. *Bi-Metallic Invest. Co. v. State Board of Equalization,* 239 U.S. 441."[10]

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[10]Without conceding that the administrative determination involved here is comparable to that involved in the *Joint Anti-Fascist* case (the Attorney General's listing of organizations as subversive or Communist); i.e., a determination as to the status or guilt of a particular organization, it should be pointed out that even as to the latter type of administrative determination a majority of the Supreme Court did not hold notice and an opportunity for a hearing to be required as a matter of due process. The prevailing opinion (that of Mr. Justice Burton, joined by Mr. Justice Douglas) noted that there had been no hearing (341 U.S. at 138, footnote 11), but the decision was rested solely on the ground that on the pleadings the designations by the Attorney General were admitted to be arbitrary and contrary to the material facts. As such, the designations were held to be beyond the authority delegated to the Attorney General by the President (341 U.S. at 124-6, 136-8).

In the dissenting opinion by Mr. Justice Reed, joined in by the Chief Justice and Mr. Justice Minton, it was held that due process did not require notice and hearing with respect to the administrative determination there involved. Four of the eight Justices participating, finding that private rights were involved, did hold that due process required notice and hearing with respect to the designation of organizations as Communist or subversive (341 U.S. at 143, 161-74, 175-8, 186-7).

Since a Federal Home Loan Bank is a federal instrumentality organized to carry out public policy (*supra,* pp. 30-35) and its functions are wholly governmental, neither the bank nor its members, although they are nominally stockholders, acquire under the provisions of the Bank Act, any vested interest in the continued existence of said bank or any legally protected private rights which would enable them to invoke the due-process clause. *People's Bank v. Federal Reserve Bank of San Francisco, supra,* 58 F. Supp. 25; *Federal Land Bank v. Bismarck Lumber Co., supra,* 314 U.S. 95; *Knox National F. L. Assn. v. Phillips, supra,* 300 U.S. 194, 202; *Federal Land Bank v. Gaines, supra,* 290 U.S. 247, 254; *Greene County N.F.L. Assn. v. Federal Land Bank* (6 C.A.), 152 F. (2d) 215 (Cert. denied, 328 U.S. 834).

We have already shown (*supra,* pp. 24, 37) that the functions carried out by the Federal Home Loan Bank Commissioner in issuing orders 5082, 5083 and 5084 are purely legislative in character, and the orders do not infringe upon any personal or property rights of these plaintiffs which are subject to legal protection. It follows that notice, hearing and formal findings of fact were not necessary to the validity of the administrative acts taken, nor can the omission of such procedural steps be relied upon as constituting arbitrary or capricious conduct for the reversal of which these plaintiffs have any standing to sue. Such omission therefore constitutes no basis for judicial relief for these plaintiffs.

Nor in any event may the action of the Board be questioned in this suit. Here the plaintiffs, attacking

the validity of the orders of March 29, 1946, seek, by their own characterization of the Los Angeles action, to recover property and to remove clouds from the title. Only on that basis did they seek and secure an order for substituted service under 28 U.S.C. 1655 (12511 R. 9502).[11] The heart of the Los Angeles action is the alleged invalidity of the orders. If, however, those orders can be attacked at all by the plaintiffs, they can be attacked only in a direct action to set them aside. They are valid until "set aside" in an "appropriate judicial proceeding" or terminated by "subsequent order" of the Board. *United States v. Corrick,* 298 U.S. 435, 440; *United States v. Vacuum Oil Co.,* 158 Fed. 536; *Lehigh Valley R. Co. v. United States,* 188 Fed. 879. But an action to recover property transferred by the orders must necessarily proceed on the presumed invalidity of the orders, a presumption which the law does not permit. Such an action constitutes a collateral attack on their validity and cannot, therefore, be maintained. *Adams v. Nagle,* 303 U.S. 532.

(4) THE HOME LOAN BANK BOARD AND ITS MEMBERS ARE INDISPENSABLE PARTIES TO THE MAINTENANCE OF THE ACTION, AND VALID SERVICES ON THE BOARD OR ITS MEMBERS WERE NOT HAD.

The law of indispensable parties, as applied to the necessity for the presence of superior administrative officers in actions wherein the validity of their acts is questioned, has been recently restated in *Williams v. Fanning,* 332 U.S. 490, and has been followed by

[11] A direct attack on the orders would, of course, have required personal service in the proper jurisdiction on the Federal Home Loan Bank Commissioner and upon the members of the Board.

this Court in *Daggs v. Klein,* 169 F. (2d) 174. These cases reaffirm the rule that a superior administrative officer is an indispensable party to an action where the relief sought "will require him to take action, either by exercising directly a power lodged in him or by having a subordinate exercise it for him." *Williams v. Fanning, supra* (p. 493). The *Fanning* case also emphasizes that such superior official is indispensable to an action in which the relief requested would involve "risk that the judgment awarded would 'expend itself on the public treasury or domain, or interfere with public administration' " (*Williams v. Fanning, supra* (p. 493).

Under either of these two tests the presence of the Home Loan Bank Board and its members is required in this action. The relief requested requires the redivision of the present Eleventh District into two districts for, as noted above, there can be one and only one bank to a district. It requires the reactivation of the Los Angeles Bank. It requires the appointment and election of officers and directors of the reactivated bank, for the terms of such officers and directors have long since expired.[12] It would require the reactivation of the Portland Bank as such. It would require issuance of new certificates of stock by both the Los Angeles and Portland banks. None of these requirements or any other essentials to the granting of the relief prayed for is possible without action by the Board. For no bank may exercise any functions

[12]Directors serve for definite terms and not until their successors are elected and qualified. Section 7, Federal Home Loan Bank Act, App. *infra,* p. x-xii.

vested in it by the Act except "subject to the approval of the Board" (Sec. 12). No decree of a Court and no act of any party properly before the Court could accomplish these essentials. For to act independently of Board approval is beyond the statutory powers of a bank, and the Court cannot authorize or compel a bank to exercise powers which the statute denies to it. To be effective, therefore, a decree of the Court granting the relief which the plaintiffs seek would necessarily require the Board "to take action * * * by exercising * * * a power lodged in" it. *Williams v. Fanning, supra,* p. 493.

The Courts can compel such action, if at all, only by the exercise of personal jurisdiction over the Home Loan Bank Board members. No subordinate subject to the jurisdiction of the Court has the power or authority which must be exercised to effectuate such a decree. Without Board action a decree attempting to grant the relief prayed for would be a futility, and could at most be only an advisory opinion. It would not be a "decree of a conclusive character" granting "specific relief." *Cf. Aetna Life Ins. Co. v. Haworth,* 300 U.S. 227, 241.

Moreover, to require such action, notwithstanding the absence of Board approval, would seriously "interfere with the public administration" and effective operation of the Home Loan Bank System not only in California and the present Eleventh District but throughout the nation. The entry of the decree sought by these plaintiffs might raise serious questions concerning the validity of consolidated debentures and

would certainly impede the issuance of additional such securities (Section 11(b) App. *infra,* p. xiii). Without Board approval, the functions of the San Francisco Bank or a reconstituted Los Angeles Bank could be performed only with serious financial risk to the directors, a risk which responsible persons would be reluctant to assume. Such a decree would impinge upon the Board's continuing duty to supervise the Federal Home Loan Bank System, for it would substitute a Court's supervision for that vested in the Board by statute. It would result in administrative chaos.

Admittedly, neither the Home Loan Bank Board nor its members were served in the State of California, nor have they subjected themselves personally to the jurisdiction of the Court. The attempt to bring them within the jurisdiction of the Court by means of substituted service, based upon 28 U.S.C. 1655, was unavailing. That section by its terms does not purport to confer personal jurisdiction upon absent defendants so served but authorizes only a judgment affecting the property which is the subject of the action. *Ladew v. Tennessee Copper Co.,* 179 Fed. 245; *Dan Cohen Realty Co. v. National Savings & Trust Co.,* 125 F. (2d) 288.

The complaint in this case is cast in terms of an action to quiet title to property. The indispensable prerequisite to a decree quieting title in this case would be a determination of the invalidity of the administrative orders complained of. Any attempt to recover property must await that determination. *Maya*

Corporation v. Smith, 32 F. (2d) 350; *Kleinschmidt v. Kleinschmidt Laboratories,* 89 F. Supp. 869, and such determination may not be made without personal jurisdiction of the Board and its members. *Wilhelm v. Consolidated Oil Corporation,* 84 Fed. (2d) 739; *Dan Cohen Realty Co. v. National Savings & Trust Co., supra,* 125 Fed. (2d) 288; *Maya Corporation v. Smith, supra,* 32 Fed. (2d) 350.

The Court below found that the non-resident defendants have made general appearances, have sought and obtained affirmative relief and have submitted to the jurisdiction of the Court (R. 309) and that previous orders of the Court have established such general appearances and submission and, having been or become final by failure to appeal therefrom or by dismissal of appeals, have become the law of the case. Such findings are plainly erroneous as a matter of law. Under present practice objections to the jurisdiction of the Court may now be coupled with a defense on the merits. Rule 12(b) of the Federal Rules of Civil Procedure expressly so provides. *Orange Theatre Corp. v. Ray Herstz Amusement Corp.,* 139 F. (2d) 871; *Gerber v. Fruchter,* 147 F. (2d) 120; *Blank v. Bitken,* 135 F. (2d) 962; *Devine v. Griffenhagen,* 31 F. Supp. 624, 2 *Moore's Federal Practice,* p. 2260, 2d Ed. Thus, even though it could be said *arguendo* that the members of the Home Loan Bank Board and other non-resident defendants had in fact requested affirmative relief, or had taken and later dismissed appeals from prior orders, or had failed to appeal therefrom, it cannot successfully be contended that

the non-resident defendants thereby "waived" their objections to the Court's attempt to exercise personal jurisdiction over them made at the outset of the litigation and reiterated at every appropriate opportunity throughout its four and one-half years.[13]

It remains, therefore, that personal jurisdiction over the Board and its members is essential to the maintenance of this action, and such jurisdiction does not exist.

(5) THE ACTION IS AN UNCONSENTED SUIT AGAINST THE UNITED STATES.

The statutory power in the Board to readjust districts and to liquidate the Los Angeles Bank is not and cannot be denied. There is alleged at most a wrongful exercise of the powers so granted. And the plaintiffs seek a decree undoing the allegedly wrongful exercise of the power.

But, as shown above (*supra* pp. 44-46), no decree of a Court which attempts to undo those results can be effective except as it requires specific action by the Board. Consequently, to afford effective relief to the plaintiffs the Court would have to require specific action by the Board; and any suit for specific relief against an officer or agency of the United States to compel official action is a suit against the United

[13]The contention that prior interim orders of the Court below can be relied upon to establish personal jurisdiction over non-resident defendants is discussed and shown to be entirely unsound as applied to the particular circumstances of this consolidated litigation in appellants' opening brief in Appeal 12,511, presently pending in this Court, pages 81-86.

States which may not be maintained except with its consent. *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682; *American Dredging Co. v. Cochrane*, 190 Fed. (2d) 106.

The allegation, assumed *arguendo* to be sufficiently pleaded, that "said orders * * * and all of the acts and things done * * * pursuant thereto operated to and did (a) deprive [the plaintiffs] of * * * property without due or any process of law" (12511 R. 9476) does not and cannot alter the rule announced in the *Larson* case. For necessarily any action which the Board might take in approving the exercise of Bank powers is governmental. *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682.

> "Of course, a suit may fail, as one against the sovereign, even if it is claimed that the officer being sued has acted unconstitutionally or beyond his statutory powers, if the relief requested cannot be granted by merely ordering the cessation of the conduct complained of but will require affirmative action by the sovereign or the disposition of unquestionably sovereign property."
>
> *Larson v. Domestic and Foreign Commerce Corp., supra*, at 691 n.

The United States has not consented to be sued herein. Congress refrained from making the Board a suable entity. It is an unincorporated agency of the United States without power to sue or be sued. The statute of the Board's creation therefore gave no consent. *Department of Agriculture v. Kenund*, 330 U.S. 539.

The Administrative Procedure Act, even if that Act is applicable to this case, does not purport to waive the pre-existing immunity of the United States from suit. In general, as previously noted, that Act merely codifies the theretofore established rules governing the scope of judicial review. See Attorney General's Manual, p. 96; *Larson v. Domestic and Foreign Commerce Corp., supra.* The authority in Section 10(e) to compel official action was not intended to enlarge the theretofore existing scope of judicial review. *State Airlines v. Civil Aeronautics Board,* 174 F. (2d) 510, 518. There is, of course, no ministerial duty prescribed by the Federal Home Loan Bank Act to restore the Los Angeles Bank or to return to it the assets theretofore transferred to the San Francisco Bank.

For each and all of the reasons above set forth. the District Court lacked jurisdiction of the Los Angeles action.

II.

ASSUMING, CONTRARY TO FACT AND LAW, THAT PLAINTIFFS' PLEADINGS STATE A CLAIM FOR RELIEF WITHIN THE COURT'S JURISDICTION, THE COURT ERRED IN AWARDING ATTORNEYS' FEES TO APPELLEES AND IMPOSING THE BURDEN OF THEIR PAYMENT UPON OTHER PARTIES TO THE LITIGATION.

(1) IN THE ABSENCE OF CONTRACT OR STATUTE EXPRESSLY PROVIDING FOR THE RECOVERY OF ATTORNEYS' FEES, ATTORNEYS EMPLOYED IN LITIGATION MUST LOOK FOR THEIR COMPENSATION TO THE PARTY WHO EMPLOYED THEM, AND ARE ORDINARILY NOT ENTITLED TO RECOVER THEIR FEES FROM OTHER LITIGANTS.

This has always been the law in this country both in state and federal Courts. The rule is laid down in numerous well-considered decisions in practically all of the states, and is based upon public policy as declared in the leading case of *Oelrichs v. Spain,* 82 U.S. 211, in which the Court said at page 230:

> "In debt, covenant and assumpsit, damages are recovered, but counsel fees are never included. So in equity cases, where there is no injunction bond, only the taxable costs are allowed to the complainants. The same rule is applied to the defendant, however unjust the litigation on the other side, and however large the expense of the litigation to which he may have been subjected. The parties in this respect are upon a footing of equality. There is no fixed standard by which the honorarium can be measured. Some counsel demand much more than others. *More counsel may be employed than are necessary. When both client and counsel know that the fees are to be paid by the other party, there is danger of abuse.* * * * We think the principle of disallowance rests on a solid foundation

and that the opposite rule is forbidden by the analogies of the law and sound public policy." (Italics supplied.)

The *Oelrichs* case has been consistently followed in the federal Courts as is shown by:

Flanders v. Tweed, 82 U.S. 450;
Rude v. Buchhalter, 286 U.S. 451;
Gold Dust Corporation v. Hoffenberg (2 C.A.), 87 F. (2d) 451;
Marks v. Leo Feist Inc. (2 C.A.), 8 F. (2d) 460;
Zumsteg v. Aetna Casualty & Surety Co. (8 C.A.), 31 F. (2d) 65.[13]

The general rule applies to suits in equity as well as to actions at law. Of the federal cases cited above, in all of which the Courts refused to allow recovery of attorneys' fees, *Oelrichs v. Spain* was a suit in equity involving an injunction, *Rude v. Buchhalter* was a suit in equity to establish and foreclose a lien, and *Gold Dust Corporation v. Hoffenberg* was an equitable proceeding involving patent infringement. Other illustrative suits in equity in which attorneys' fees have not been allowed are *Van Sender v. Wil-*

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[13]The same rule is universally applied in state courts, typical of which are:

In re Marre's Estate, 18 Cal. (2d) 191, 114 P. (2d) 591;
O'Morrow v. Board, 27 Cal. (2d) 794, 167 P. (2d) 483;
State v. City of Bremerton, 8 Wash. (2d) 93, 111 P. (2d) 612;
Kern v. Genter, 176 Ore. 479, 159 P. (2d) 190;
Hempstead v. Meadville Theological School, 286 Pa. 493, 134 Atl. 103;
Berndorf v. Thorpe, 126 Okla. 157, 259 Pac. 242.

kinson (C.A. D.C.), 76 F. (2d) 151 (suit to enforce a trust and for accounting) and *Doddridge County Oil & Gas Co. v. Smith* (4 C.A.), 173 F. 386 (suit to determine validity of oil and gas lease and to recover possession).

The rule which confines to narrow limits the right to recover attorneys' fees in litigation is in harmony with the historic policy of our law respecting the recovery of costs in general. No costs were recoverable by either party at common law. *Mutual Ben. Health & Accident Ass'n. v. Moyer* (9 C.A.), 94 F. (2d) 906. Later, a limited recovery of costs was permitted to the prevailing party by statute in England (6 Edward I. C. 2 and 23 Henry VIII) and these statutes remained the basis for the recovery of costs in our federal Courts until 1853 when the first federal cost statute was enacted (Rev. St. (1878) Sec. 983). This statute, after being carried forward with minor modification, has now been superseded by Chapter 123 of the Judicial Code (28 U.S.C., Sec. 1911-1929). It is significant that none of these cost statutes has ever provided for the recovery of substantial attorneys' fees. Only docket fees of nominal amount may be taxed (28 U.S.C., Sec. 1923). This provision for the recovery of specified nominal attorneys' fees precludes any inference that substantial attorneys' fees can be taxed as costs in a federal case, and it has been so held by this Court. *Mutual Ben. Health & Accident Ass'n. v. Moyer* (9 C.A.), 94 F. (2d) 906, in which the Court said:

"The right to costs is purely statutory. No such right existed at common law. *Day v. Woodworth*, 13 How. 363, 372, 14 L. Ed. 181. No party is entitled to costs until he prevails in the suit, in other words, until judgment is entered. Whatever the statute provides at that time is the measure of his allowable costs."

(2) AN ADVERSE PARTY MAY NOT RECOVER ATTORNEYS' FEES UNLESS THE CASE CLEARLY FALLS WITHIN THE LIMITED AND WELL DEFINED EXCEPTIONS TO THE GENERAL RULE AND THIS CASE DOES NOT FALL WITHIN ANY OF THEM.

The award of attorneys' fees herein appealed from cannot be sustained on any basis of special contract or statutory authorization. No special contract between any of the parties provides for recovery of attorneys' fees; nor is there any specific statutory authority for the award of fees in this case. Thus cases based on contract or statute need not be here considered. It should be noted, however, that while there are a number of federal statutes permitting the recovery of attorneys' fees in a variety of special situations, those statutes with practical unanimity limit the recovery of attorneys' fees to the "prevailing party", with the necessary result that such statutory attorneys' fees can be allowed only after a trial on the merits.

The only question, therefore, is whether the present case falls within one of the recognized exceptions to the general rule that attorneys' fees are not recoverable, which exceptions for convenience may be divided into the following categories:

(a) Attorneys' fees have in some cases been assessed against a party to a suit in equity where "gross charges of fraud and misconduct have been made and not sustained", or "where the main ground of the suit is false, unjust, vexatious, wanton or oppressive, and so shown to be", or where a fiduciary relationship exists, such as trustee and beneficiary, pledgor and pledgee, or principal and agent, and the fiduciary is put to expense, either in defending an unfounded suit or in administering or protecting and preserving the trust property or pledged property. *Guardian Trust Co. v. Kansas City Southern Ry. Co.* (8 C.A.) 28 F. (2d) 233. No argument is needed to show that the order now before the Court on this appeal does not fall within this category. Moreover, in none of these instances is recovery of attorneys' fees against an adverse party allowed prior to a determination on the merits.

(b) Attorneys' fees may be allowed where the Court is administering a fund or property in a proceeding truly *in rem,* as in the administration of decedents' estates, administering insolvents' estates either through bankruptcy[14] or liquidating equity re-

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[14]The administration of the estate of a bankrupt is a proceeding *in rem:*

Hanover National Bank v. Moyses, 186 U.S. 181:
"Proceedings in bankruptcy are, generally speaking, in the nature of proceedings *in rem* * * *. Service of process or personal notice is not essential to the binding force of the decree."

To same effect:

6 *Am Jur.,* p. 569;
Local Loan Co. v. Hunt, 292 U.S. 234.

ceiverships,[15] proceedings for corporate reorganization in bankruptcy, and admiralty and condemnation proceedings.

These strictly *in rem* proceedings comprise the principal group in which attorneys' fees, not authorized by contract or statute, are allowed and paid, and practically all of the situations where Courts make interim allowances on account of attorneys' fees. The allowance of attorneys' fees in such proceedings, whether interim or final, is predicated on the underlying nature of proceedings *in rem,* namely, that the Court itself has possession of the *res* and is directly charged with its administration,[16] and that those parties who aid the Court are entitled to be paid out of the *res* as a part of the necessary cost of judicial administration. Where attorney or other fees are allowed in such cases they are granted for services rendered directly to the Court or its representative for the benefit of all parties or all claimants to the property before

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[15]Administration of funds through equity receiverships are proceedings *in rem.*

Booth v. Clark, 17 How. 322, 331;
Atlantic Trust Co. v. Chapman, 208 U.S. 360, 370;
Culhane v. Anderson (8 C.A.), 17 F. (2d) 559.

[16]In *Porter v. Sabin,* 149 U.S. 473, 479, the Court said:
"When a Court exercising jurisdiction in equity appoints a receiver of all of the property of a corporation, the Court assumes the administration of the estate; the possession of the receiver is the possession of the Court; and the Court itself holds and administers the estate, through the receiver as its officer, for the benefit of those whom the Court shall ultimately adjudge to be entitled to it."

the Court, not for services rendered to any of several adversary claimants for their sole benefit.

The complaint of the Los Angeles Bank and its shareholder members and the cross-claim of the Los Angeles Bank in the Mallonee action, as they have been construed by appellees, are suits to quiet title or to remove a lien or cloud upon title, and to recover possession of property and for an accounting. Neither a suit to quiet title or remove a lien or cloud on title, nor a suit to recover possession of property, nor a suit for an accounting, constitutes a proceeding *in rem,* or otherwise invests the Court with power to administer a fund or property. While a suit to quiet title or to remove a lien or cloud is sometimes described as a proceeding *"quasi in rem",*[17] it differs fundamentally from an *in rem* action.[18] In a quiet title proceeding the Court does not take possession of the property but merely adjudicates with respect to its title, and then only as between the plaintiff and the parties defendant who have received actual or constructive service of process. As to the right to re-

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[17]In *McDaniel v. McElvy,* 91 Fla. 770, 108 So. 820, 830, the Court said:

> "Suits of this nature [to quiet title] are not technically suits in rem, nor are they strictly speaking in personam, but, being against the person in respect of the res, wherein the decree does not extend beyond the property in controversy, these proceedings acquire a status that may be characterized as suits quasi in rem."

[18]*Pennoyer v. Neff,* 95 U.S. 714;
Arndt v. Griggs, 134 U.S. 316, 326;
1 *C.J.S.,* p. 944;
Gassert v. Strong, 38 Mont. 18, 98 P. 497.

cover costs and attorneys' fees, the same rules prevail as in ordinary *in personam* actions.[19]

It is obvious, therefore, that the award of attorneys' fees to appellees may not be justified by this group of precedents. In neither of the consolidated actions is there any *res* being administered by the Court; the deposits are simply being held in Court pending a determination of the rights thereto. No facts or circumstances are alleged in any of the pleadings which would invoke the *in rem* jurisdiction of the Court; none of the pleadings seek to invest the Court with *in rem* authority and the Court has not, through the appointment of a receiver, trustee, administrator or other representative of the Court, attempted to exercise any *in rem* jurisdiction. The mere fact that various funds have been deposited in Court does not create *in rem* jurisdiction. Such deposits are frequently made as incident to *in personam* litigation without changing the essential nature of such actions. And the fact that a federal suit in equity involves a dispute as to the ownership of a fund on deposit in Court does not render such suit an *in rem* proceeding or entitle one party to recover attorneys' fees from another party, or from the fund.

Hauenstein v. Lynham, 100 U.S. 483, 491;
Hobbs v. McLean, 117 U.S. 567, 582;

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[19]44 *Am. Jur.*, p. 83;
Faxon v. All Persons, 166 Cal. 707, 137 P. 919, 925.
In a suit to quiet title, attorneys' fees are not allowed either as damages or costs; *McGuinness v. Hargiss,* 56 Wash. 162, 105 P. 233, 234.

National Bank v. Whitney, 103 U.S. 99, 103 U.S. 104.

In *Leary v. United States,* 257 Fed. 246 (4 C.A.), the Court in holding that the Leary Estate, after being awarded a portion of a fund which had been paid into Court, was not entitled to recover its attorneys' fees either from the other litigants or out of their portion of the fund, said:

> "We find no authority for subjecting the defeated party to any greater liability. In *Hauenstein v. Lynham,* 100 U.S. 483, 491, the Supreme Court said: 'It is a settled rule in this Court never to allow counsel on either side to be paid out of the fund in dispute.' "

In *Riddle v. Hudgins,* 58 Fed. 490, 494, the Court said at page 494:

> "We know of no case where a Court can take the money of a plaintiff which happens to come into its possession, and use it to pay his adversary's attorneys. The cases are very rare where the Court is justified in directing the payment of attorneys' fees out of a fund in Court, and, without stopping to enumerate them, it is enough to say that this is not one of them. *Trustees v. Greenough,* 105 U.S. 527; *Hauenstein v. Lynham,* 100 U.S. 483, 491."

(c) In an action or proceeding brought by one or more for the benefit of a class, or under circumstances which result in conferring benefits upon others similarly situated, and where by reason of plaintiffs' ac-

tion a fund or property has been created or preserved, or property rights have been established which inure to the benefit of others, equity will under proper circumstances permit the plaintiff to recover his expenses of litigation "as between solicitor and client" including reasonable attorneys' fees.

Trustees v. Greenough, 105 U.S. 527;[20]
Hobbs v. McLean, 117 U.S. 567, 581;
Sprague v. Titonic Bank, 307 U.S. 161;
Crump v. Ramish (9 C.A.), 86 F. (2d) 362;
O'Hara v. Oakland County (6 C.A.), 136 F. (2d) 152.

The right to recover is, however, entirely dependent on the success of the litigation in establishing the common benefit.

Hobbs v. McLean, 117 U.S. 567;
Sprague v. Titonic Bank, 307 U.S. 161;[21]
Hempstead v. Meadville Theological School, 286 Penn. 493, 134 Atl. 103;
Merrick v. Bonness, 66 Minn. 135, 68 N.W. 850;
Forrester v. Boston & M. Consol. & Silver Min. Co., 29 Mont. 397, 74 P. 1088, 76 P. 211.

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[20]The cases dealing with the "fund doctrine" as a basis for the recovery of attorneys' fees are collected and discussed in 49 A.L.R. 1190 and 107 A.L.R. 749. See also 19 *C.J.S.*, p. 256 and 14 *Am. Jur.*, p. 46, et seq.

[21]In *Sprague v Titonic Bank, supra,* the Court said:

"They (costs as between solicitor and client) are not of a routine character like ordinary taxable costs; they are contingent upon the exigencies of equitable litigation, the final disposition of which in its entire process including appeal places such a claim in better perspective than it would have in an earlier stage."

And since the right to the allowance is contingent upon success, the application for fees prior to the determination of an action is premature.

Goodwin v. Castleton, 19 Wash. (2d) 748, 144 P. (2d) 725;

Uffelman v. Boillin, 19 Tenn. App. 1, 82 S.W. (2d) 545.

Furthermore, such fees are not assessable as costs against the party to the litigation but are payable only out of the fund or property which has been created or preserved, or by proportional contribution from those who have benefited by the action.

Trustees v. Greenough, 105 U.S. 527;

Buford v. Tobacco Growers' Co-op Ass'n. (4 C.A.), 42 F. (2d) 791, at 792;

Crump v. Ramish (9 C.A.), 86 F. (2d) 362;

O'Hara v. Oakland County (6 C.A.), 136 F. (2d) 152;

Winslow v. Harold G. Ferguson Corporation, 25 Cal. (2d) 274, 148 P. (2d) 86.

Since this action has not yet been tried, the appellees have not "prevailed" in their action, and no fund or property has yet been created or preserved. Any allowance of attorneys' fees to appellees at the present stage of the litigation is obviously premature. Furthermore, if and when the appellees do prevail in the action any attorneys' fees allowed may be made payable only out of the fund or property recovered or by proportional contribution from those who have benefited by appellees' action. Clearly, the order

awarding attorneys' fees to appellees at this stage of the proceeding cannot be sustained under the principles or authorities noted in this subsection (c).

(d) Nor can the order appealed from be sustained by the authorities holding that where an application has been made for the appointment of a receiver for a corporation, attorneys' fees and expenses in resisting such application, if made in good faith and upon reasonable grounds, may in the sound discretion of the Court be allowed as a claim in the receivership.

In the proceeding below appellees cited in support of their contention the following cases:

Ex parte Fahey, 332 U.S. 258;
Barnes v. Newcomb, 89 N.Y. 108, 115-116;
Anderson v. Great Republic Life Insurance Co., 41 Cal. App. (2d) 181, 106 P. (2d) 75;
Pickrel v. Merion (6 C.A.), 66 N.E. (2d) 273;
Caminetti v. State Mut. Life Ins. Co., 52 Cal. App. (2d) 326, 126 P. (2d) 169.

Ex parte Fahey, 332 U.S. 258, is not in point. In that case the Supreme Court denied an application for writ of mandamus and prohibition to stop the payment of an attorneys' fee to counsel for the shareholder plaintiffs in the Mallonee action solely on the ground that it was not a proper case for the exercise of the extraordinary power of the Court since appeal was an adequate remedy. The Court said (p. 259):

> "The petition involves serious questions of law and of fact. Whether, because of the pendency of the appeal and the stay order granted therein,

> the District Court had power to entertain the application, whether before the final outcome of the case could be known an allowance was premature, whether the source of the fund on deposit with the court was so related to the services as to be subject to disbursement for their compensation, and whether one judge can make allowances in a case before a three-judge court, are, with other questions, much contested. *We do not decide any question as to the merits.*" (Italics supplied.)

The leading case in support of this rule of law, *Barnes v. Newcomb, supra,* as well as the other cases cited, fall into the same general pattern briefly described as follows: A suit is brought against a corporation alleging insolvency and asking for the appointment of a receiver. The suit is resisted but plaintiff prevails and a receiver is appointed. The corporation or its attorney then files a claim *in the receivership* for attorney's fees and costs. The cases hold that the Court may, in its discretion, allow the claim if it is convinced that the resistance was offered in good faith and for probable cause.[22]

The reason for the rule is that since the directors of a corporation are trustees for the benefit of its shareholders, they have the legal duty to take proper

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[22]"It is a general rule that where an application has been made for the appointment of a receiver for a corporation, attorneys' fees and expenses in resisting such application, if made in good faith and upon reasonable grounds, may become a valid claim *against the receiver.*" (Italics supplied.) *Anderson v. Great Republic L. Ins. Co.*, 41 Cal. App. (2d) 181, at 191, 106 P. (2d) 75.

steps to protect the corporation. If in the discharge of that duty they honestly and reasonably believe that the appointment of a receiver would not be to the advantage of the shareholders, they may defend the suit and incur a valid claim against the corporation in so doing.[23]

The law established by *Barnes v. Newcomb* affords no support for the order involved in this appeal. In fact, the receivership cases and the instant case are characterized by their differences rather than by their resemblances:

(1) In the receivership cases, the corporation's attorneys' fees are being paid out of the corporation's undisputed assets, while in the instant case the

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[23]The reason for the rule is well stated in *Esarey v. Pierson*, 84 Ind. App. 109, 141 N.E. 87, as follows:

> "It is the duty of the officers of a corporation as trustees of all interested therein to take the necessary steps to protect its corporate existence, and to repel an attack which they regard as unfounded, and it is proper that reasonable expenses incurred by them for that purpose be allowed them. But it is entirely in the discretion of the court administering the fund to determine up to what stage opposition is proper, and what is a reasonable sum to be allowed, or whether any allowance should be made."

And in *Watson v. Johnson*, 174 Wash. 12, 24 P. (2d) 592, the reason underlying the rule is stated thus:

> "The principle upon which an allowance is made is that counsel fees and costs of the litigation are in the nature of expenses incurred by the corporation and its directors in the protection and preservation of the trust which they represent; and, even if it turns out that a case is made for interference by the appointment of a receiver and the dissolution of the corporation, so long as the defense was made in good faith and upon reasonable grounds, there is apparent justice in subjecting the property and the fund involved in the litigation to the expenses incurred in discharging a general duty cast upon the corporation and its directors to take all reasonable means for its protection."

plaintiffs' attorneys' fees are sought to be paid out of property which defendant claims to own.

(2) In the receivership cases the attorneys' fees are not allowed as costs in an action between adverse claimants to property, but as an indebtedness validly incurred by the corporation. There is, therefore, involved no question of taxing the attorneys' fees of one party against another party to the litigation.

(3) In the receivership cases the attorneys' fees are allowed not as part of the proceedings in the litigation for the appointment of a receiver, but as a debt of the corporation to be paid out of its undisputed assets by the receiver.

(4) In the receivership cases before the claim for attorneys' fees may be allowed it must affirmatively appear that the action was defended in good faith and upon reasonable grounds and for probable cause, facts which can only be determined by a trial of the action on the merits, while in the instant case attorneys' fees have been ordered paid prior to trial on the merits and, therefore, without any basis for determining good faith, reasonable ground or probable cause.

Eggert v. Pacific States Savings & Loan Company, 53 Cal. App. (2d) 552, 127 P. (2d) 999, cited below, does not support the award of attorneys' fees. There the building and loan commissioner, in possession of all the assets of the Pacific States Savings & Loan Company, which included assets transferred to it by the Fidelity Savings and Loan Association, could not,

because of his position, defend against a suit brought by shareholders of the Fidelity Association to impress a trust on part of such assets. The Pacific States Company thereupon defended the suit, were unsuccessful, but were allowed attorneys' fees out of the *undisputed* assets of the Pacific States Company.[24] There was involved in that case no question of payment of attorneys' fees incurred in behalf of one litigant out of assets claimed by another.

It is apparent, therefore, that this is not a case in which the Court may award attorneys' fees. On the contrary, it is a case in which the Courts have consistently denied applications for fees. For this is a case whose purpose is to regain for some of the members of the former Los Angeles Bank the power

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[24]It is true that the Court, as did the plaintiffs, proceeded on the theory that the assets sought to be recovered in the Los Angeles action belonged indisputably to the Los Angeles Bank. In the hearing at which the motion for fees was granted, the Court said (R. 761):

> "They are not saying that they want attorney fees from the defendant; they say they want attorney fees from *their own money which the defendant has got* * * *." (Emphasis supplied.)

And again in what appears to be a rhetorical question addressed to Mr. Dusenbery, the Court said (R. 764):

> "You mean to say that somebody can come in and take your property, your house and all your property and your bank account, under some claim or color of right, and that you would be compelled to finance your lawsuit against him and could not finance it out of *your own property in his possession?*" (Emphasis supplied.)

However, the ownership of those assets is the very question to be determined in the Los Angeles action, and until the case is decided on its merits the Court may not assume that the orders of March 29, 1946, are void or that such assets belong to the Los Angeles Bank.

to elect the management of a bank.[25] Corporate funds may not be used to finance such litigation.

Chabot & Richard Co. v. Chabot, 109 Me. 403, 84 A. 892;

Jesse v. Four-Wheel Drive Auto Co., 177 Wis. 627, 189 N.W. 276;

Hooker, Corser & Mitchell Co. v. Hooker, 88 Vt. 335, 92 A. 443;

Harbison v. First Presbyterian Society of Hartford, 46 Conn. 528, 33 Am. Rep. 34;

Lawyers' Advertising Co. v. Cons. Ry. Lighting & Refr. Co., 187 N.Y. 395, 80 N.E. 199.

Thus we have shown in this section of the brief that the award of attorneys' fees cannot be sustained on any theory of law. We have discussed the law as it applies to private litigants. However, those rules of law apply here with even greater force. For, as indicated, "the controversy does not lie, in its present aspect, in the field of private corporation law." Cf., *Greene County Nat. F. L. Ass'n v. Federal Land Bank,* 152 F. (2d) 215, 219. As has been shown, a Federal Home Loan Bank is an instrumentality of the United States performing important governmental functions. The funds of the bank are funds used

[25]That this is a "quarrel over power" and not an action brought for the benefit of all the class whom the association plaintiffs purport to represent, is amply demonstrated by the suit in the United States District Court for the Northern District of California (*supra,* p. 7). There ten Northern California associations, former members of the Los Angeles Bank, brought an independent class action to enjoin the San Francisco Bank and its directors from executing a proposed stipulation under which the Los Angeles Bank would have been re-constituted. That suit was promptly enjoined in the consolidated action.

only in the performance of such functions. They must, therefore, be public funds. Cf., *Inland Waterways Corp. v. Young,* 309 U.S. 517, 524; *D'Oench Duhme & Co., Inc. v. Federal Deposit Insurance Corp.,* 315 U.S. 447; *Federal Deposit Ins. Corp. v. Citizens' State Bank,* 130 F. (2d) 102. Public policy should prohibit the use of those funds for the benefit of a few who seek to regain the management of a federal instrumentality.

III.

ASSUMING, CONTRARY TO FACT AND LAW, THAT PLAINTIFFS' PLEADINGS STATE A CLAIM FOR RELIEF WITHIN THE COURT'S JURISDICTION AND THAT THE COURT IS AUTHORIZED TO AWARD ATTORNEYS' FEES, THE COURT ERRED IN DIRECTING PAYMENT OF SUCH FEES OUT OF MONIES ON DEPOSIT IN THE REGISTRY OF THE COURT.

The authorities cited and discussed in the preceding Section II of this brief establish the proposition that the fees of appellees' attorneys may not be assessed against appellants nor be made payable out of funds or property in dispute. As we have already seen, (*supra,* pp. 56-59), the fact that the action involves funds which have been drawn into Court does not transform it into one in which attorneys' fees are recoverable.

The order appealed from is unique. It is not a judgment directing the Federal Home Loan Bank of San Francisco to pay the amount of attorneys' fees allowed. It directs the clerk of the Court to make the payment "forthwith" out of funds on deposit

in the registry of the Court. Moreover, the order directs payment "generally from funds in the Registry of the Court" and purports to reserve for future determination the "fixing, allowance, allocation, assessment, or apportionment of attorneys' fees * * * for or against any or all of the parties * * *", excepting that such fees shall never be "allocated against or imposed upon funds or assets of Long Beach Federal Savings and Loan Association or any of its shareholders, members, or stockholders", and that the Association shall never be required to deposit any additional money or property in Court because of the payment of attorneys' fees under the order appealed from. In other words, the order directs the payment of the attorneys' fees generally out of the funds in Court, but reserves the right later to allocate the payment among the various funds and claimants thereto, excepting that Long Beach Association and its property shall be immune from contributing to such payment.

A brief examination of the funds on deposit in Court will show that the necessary effect of the devious provisions of the order is to impose payment of the attorneys' fees upon the appellants, and particularly upon the appellants Federal Home Loan Bank of San Francisco and Federal Savings and Loan Insurance Corporation.

There are no general funds on deposit in Court. All funds were deposited in purported interventions or interpleaders as to each of which several separate and distinct claims are asserted.

All of the funds in the registry of the Court were created in proceedings in the Mallonee case and relate to the business and affairs of the Long Beach Association. None of the legal services described in the order appealed from were performed in connection with any of the interpleaders or interventions in which the deposits were made. And in none of the proceedings which resulted in the deposits in Court has the Los Angeles Bank asserted any claim for attorneys' fees.

As to five deposits in the registry of the Court, the Los Angeles Bank is not a party to any of them and has not claimed any interest in them. These five deposits may be briefly described as follows:

(1) Notes and deeds of trust deposited by Title Service Company, as trustee, of the original face amount of $800,000.00 (12511 R. 43), and to which other notes and deeds of trust have subsequently been added (e.g., 12511 R. 995, 2588). The deposits were made in alleged interpleader proceedings brought by Title Service Company in which Long Beach Association and A. V. Ammann as Conservator of the Association were alleged to be the adverse claimants. No other person or party is alleged or shown to have any interest in the deposited securities.

(2) More than $1,500,000.00 was paid into the registry of the Court by various debtors of Long Beach Association in connection with approximately fifty separate intervention proceedings (e.g., 12511 R. 1228, 1605, 1674), for the alleged purpose of clearing

title to approximately 400 properties. The intervention proceedings were alleged to be necessary because Long Beach Association refused to accept payment or to direct the trustee to reconvey and denied the right of the Conservator to do so, on the alleged ground that his appointment was invalid, with the asserted result that intervenor's titles could be cleared only by depositing the payments in Court and obtaining a Court order directing the Long Beach Association and the Conservator to instruct the trustee to make the reconveyances. The funds so deposited clearly belong to the Long Beach Association.

(3) A $50,000.00 cashier's check payable to Robert H. Wallis, deposited unendorsed in Court in a proceeding alleged to be in the nature of interpleader, in which the said Wallis as the plaintiff in interpleader and the Long Beach Association and Ammann as Conservator of said Association, are alleged to be the adverse claimants (12511 R. 86). This check and the proceeds thereof belong either to Long Beach Association or to the said Wallis, and no other person or party is alleged or shown to have any interest therein.

(4) The sum of $55,485.25 was deposited in Court in May, 1949, by Long Beach Association in a proceeding alleged to be in the nature of an interpleader involving disputed insurance premiums claimed by Federal Savings and Loan Insurance Corporation to be due and owing (12511 R. 6473). Similar additional deposits were made (12511 R. 6920, 8965). The proceedings disclose that the only possible claimants

to this fund are Long Beach Association and Federal Savings and Loan Insurance Corporation.

(5) The sum of $18,503.52 was deposited in the registry of the Court by George Turner (12511 R. 3461) in a so-called interpleader proceeding in which Turner was the plaintiff, and Long Beach Association is alleged to be an adverse claimant and no other adverse claimants were named. Turner disclaims any interest in the fund and the Long Beach Association is the only possible claimant.

It seems clear that neither the Los Angeles Bank nor the plaintiff shareholder members thereof are entitled to recover their attorneys' fees from any of the above described deposits. Such payment could not be made without an unlawful invasion of the property rights of others who could not on any theory known to the law be held liable for payment of these attorneys' fees. The first (1), the second (2), and the fifth (5) deposits belong indisputably to Long Beach Association. The third (3) belongs either to Robert H. Wallis or to Long Beach Association. The fourth (4) belongs either to Long Beach Association or to Federal Savings and Loan Insurance Corporation. The Long Beach Association is expressly exempted by the terms of the order allowing attorneys' fees from all obligation to contribute directly or indirectly to their payment, while Robert H. Wallis and Federal Savings and Loan Insurance Corporation are strangers to the controversy in which the fees were incurred.

Moreover, aside from the Turner "interpleader", the basis for which is incomprehensible, each of the interventions and interpleaders out of which the deposit in Court arose results from a collateral attack upon the order of the Federal Home Loan Bank Administration appointing a conservator for the Long Beach Association. Each rests upon a presumption which denies the validity of that order. But the appointment was valid until "set aside" in an "appropriate judicial proceeding" or terminated by "subsequent order of the Board". *United States v. Corrick, supra,* 298 U.S. 435; *Lehigh Valley R. Co. v. United States, supra,* 188 Fed. 879. Each of the "interpleaders", therefore, constitutes a collateral attack upon that order, a collateral attack which is clearly impermissible and which cannot be maintained. *Adams v. Nagle,* 303 U.S. 532. The deposits made pursuant thereto are, consequently, improperly in Court and not subject to disbursement by the Court.

Thus, there remains for consideration only the sixth deposit, briefly described as follows:

(6) Promissory notes in the principal amount of $6,300,000 executed on behalf of Long Beach Association by Ammann as its Conservator in favor of the San Francisco Bank, evidencing a loan of money made by the bank to Long Beach Association through its Conservator, together with collateral security thereof, were deposited in the registry of the Court pursuant to order dated March 13, 1948 (12511 R. 8399). The collateral initially deposited consisted of United States Government bonds of the face value of

$5,300,000 and promissory notes and deeds of trust originally pledged to the San Francisco Bank. The notes and deeds of trust were subsequently returned to Long Beach Association, and cash in excess of $1,000,000 then on deposit in Court as a result of intervention proceedings described in (2) above was by order of Court declared to be substituted collateral (12511 R. 8533-8534). The proceeding in which said deposit was made is alleged to be in the nature of interpleader, in which Long Beach Association is the plaintiff claiming all the property impleaded, and the San Francisco Bank and the Los Angeles Bank are alleged to be the defendants in interpleader and the adverse claimants to said notes and collateral.

The claim of the Los Angeles Bank for an award of fees out of this fund, is predicated upon the alleged invalidity of Order 5082 transferring its assets to the San Francisco Bank, and that it is therefore entitled to trace those assets through the San Francisco Bank into the funds in the registry of the Court. The Long Beach Association asserts that it is entitled to the same notes and collateral because they were given to the San Francisco Bank by Ammann as Conservator, and that Ammann acted without authority in that the order appointing him was invalid. Long Beach Association further asserts that if the notes are valid obligations it is in doubt as to which bank the obligations are owed, thus also raising the issue of the validity of Orders 5082, 5083 and 5084. The entire purported interpleader proceeding involving these notes and the security therefor is thus

clearly an impermissible collateral attack based solely on an unallowable presumption of the invalidity of four administrative orders, and as such the so-called interpleader proceeding involving the sixth deposit cannot be maintained. (*Adams v. Nagle,* 303 U.S. 532.)

Even if the interpleader proceeding could be maintained, the Los Angeles Bank and its shareholder members would not under any view of the law be entitled to the payment of their attorneys' fees out the funds impleaded. The proceeding is not a true interpleader. Since the plaintiff Long Beach Association claims an interest in the property impleaded, the proceeding is at most an action in the nature of interpleader. The law is well settled that where a proceeding is merely one "in the nature of interpleader" and the plaintiff is not a disinterested stakeholder but is himself a claimant or has a controversy with the claimant, not only is the impleading plaintiff not entitled to recover attorneys' fees (*Groves v. Sentell,* 153 U.S. 465; *Century Ins. Co. v. First Nat. Bank,* (5 C.A.), 133 Fed. (2d) 789; *Gulf Pipe Line v. Warren,* 45 S.W. (2d) 719, 722 (Tex. Civ. App. '31); 48 *C.J.S.* p. 105), but even the prevailing claimant cannot recover such fees from the fund impleaded or from any adverse party. In *Guardian Life Insurance Co. v. Rosenbaum* (3 C.A.), 280 Fed. 861, it was held that a prevailing claimant could not recover his attorneys' fees from the other parties, since "the fund is in no way created by the defendant claiming it". To the same effect are *Amer-*

ican Water Works & Electric Co. v. Allegheny T. Co., 43 Fed. Supp. 102 (D.C. Pa.) (aff'd 125 Fed. (2d) 561), and *Continental Trust Co. v. Corbin,* 80 Fed. Supp. 394. Obviously, a claimant in interpleader cannot recover from the impleaded fund attorneys' fees incurred in another action or proceeding.

The Court's order directing payment of attorneys' fees out of the deposits in Court is therefore without authority in law. Particularly is this true since the payment invaded lien rights of appellant, Federal Home Loan Bank of San Francisco, and operated to reduce the funds held in Court which are security for indebtedness due the San Francisco Bank. For the order directs "that the amounts, or any part thereof, herein allowed and ordered paid from said funds shall never be allocated against or imposed upon funds or assets owned by or belonging to the Long Beach Federal Savings and Loan Association" and that "Long Beach Association shall not at any time be required to deposit any additional money or property in Court in these consolidated actions upon or because of the payment of all or any portion of the sums herein ordered and directed to be paid". Since there are no general funds on deposit in Court, the effect of the order is to require payment of fees for attorneys of Los Angeles Bank out of funds previously, by the Court's own order, set aside as substituted collateral securing the obligations owed to the San Francisco Bank. The order further specifically insures that the resulting impairment of collateral shall never be cured.

CONCLUSION.

It is therefore submitted that the order of the District Court awarding attorneys' fees is not sustainable and should be reversed.

Dated, San Francisco, California,
October 5, 1951.

Respectfully submitted,

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(Appendix Follows.)

Appendix.

Appendix

Federal Home Loan Bank Act as Amended
(12 U.S.C. 1421.)

* * * * * * *

Sec. 3. As soon as practicable the board shall divide the continental United States, Puerto Rico, the Virgin Islands, and the Territories of Alaska and Hawaii into not less than eight nor more than twelve districts. Such districts shall be apportioned with due regard to the convenience and customary course of business of the institutions eligible to and likely to subscribe for stock of a Federal Home Loan Bank to be formed under this Act, but no such district shall contain a fractional part of any State. The districts thus created may be readjusted and new districts may from time to time be created by the board, not to exceed twelve in all. Such districts shall be known as Federal Home Loan Bank districts and may be designated by number. As soon as practicable the board shall establish, in each district, a Federal Home Loan Bank at such city as may be designated by the board. Its title shall include the name of the city at which it is established. (12 U.S.C. 1423.)

Sec. 4. (a) Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, or savings bank, shall be eligible to become a member of, or a nonmember borrower of, a Federal Home Loan Bank if such institution (1) is duly organized under the laws of any

State or of the United States; (2) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and (3) makes such home mortgage loans as, in the judgment of the board, are long-term loans (and in the case of a savings bank, if, in the judgment of the board, its time deposits, as defined in section 19 of the Federal Reserve Act, warrant its making such loans). No institution shall be eligible to become a member of, or a nonmember borrower of, a Federal Home Loan Bank if, in the judgment of the board, its financial condition is such that advances may not safely be made to such institution or the character of its management or its home-financing policy is inconsistent with sound and economical home financing, or with the purposes of this Act.

(b) An institution eligible to become a member or a nonmember borrower under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district, if demanded by convenience and then only with the approval of the board.

(c) Notwithstanding the provisions of clause (2) of subsection (a) of this section requiring inspection and regulation under law as a condition with respect to eligibility for membership, any building and loan association which would be eligible to become a member of a Federal Home Loan Bank except for the fact that it is not subject to inspection and regulation

under the banking laws or similar laws of the State in which such association is organized shall, upon subjecting itself to such inspection and regulation as the board shall prescribe, be eligible to become a member.

SEC. 5. No institution shall be admitted to or retained in membership, or granted the privileges of nonmember borrowers, if the combined total of the amounts paid to it for interest, commission, bonus, discount, premium, and other similar charges, less a proper deduction for all dividends, refunds, and cash credits of all kinds, creates an actual net cost to the home owner in excess of the maximum legal rate of interest or, in case there is a lawful contract rate of interest applicable to such transactions, in excess of such rate (regardless of any exemption from usury laws), or, in case there is no legal rate of interest or lawful contract rate of interest applicable to such transactions, in excess of 8 per centum per annum in the State where such property is located. This section applies only to home mortgage loans made after the enactment of this Act. (12 U.S.C. 1424.)

SEC. 6. (a) As soon as practicable after the enactment of this Act, the board, with the approval of the Secretary of the Treasury, shall determine the minimum capital of each Federal Home Loan Bank which shall be not less than $5,000,000. The board shall, as soon as practicable thereafter, open books in each district established under section 3 for subscription to the capital stock of the Federal Home Loan Bank of the district.

(b) The capital stock of each Federal Home Loan Bank shall be divided into shares of a par value of $100 each. The minimum capital stock shall be issued at par. Stock issued thereafter shall be issued at such price not less than par as may be fixed by the board.

(c) The original stock subscription for each institution eligible to become a member under section 4 shall be an amount equal to 1 per centum of the aggregate of the unpaid principal of the subscriber's home mortgage loans, but not less than $500. The board shall from time to time adjust the amount of stock held by each member so that, as nearly as possible, such member shall at all times have invested in the stock of the Federal Home Loan Bank at least an amount calculated in the manner provided in the preceding sentence (but not less than $500). If the board finds that the investment of any member in stock is greater than that required under this section, upon application of such member, the bank shall pay such member for each share of stock in excess of the amount so required an amount equal to the value of such stock, or, at the election of the bank, the whole or any part of the payments which would be so made shall be credited upon the indebtedness of the member to the bank. In either such event, stock equal in value to the amount of the payment or credit, or both, as the case may be, shall be surrendered and canceled. No share of stock shall be surrendered and canceled if the effect of such surrender and cancellation would be to violate the provisions of section 10 (c) requiring the amount of stock

held by such member to equal at least one-twelfth of the outstanding advances to such member.

(d) Stock subscriptions other than by the United States shall be paid for in cash, and shall be paid for at the time of application therefor, or, at the election of the subscriber, in installments, but not less than one-fourth of the total amount payable shall be paid at the time of filing application, and a further sum of not less than one-fourth of such total shall have been paid at the end of each succeeding period of four months.

(e) If the law of the State under which an institution described in section 4 operates does not permit such institution to subscribe for stock in the Federal Home Loan Bank but if such institution has the power to borrow money and give security therefor, the board may permit such institution to obtain advances on the same terms and conditions and subject to the same limitations as members (except that such institution shall not be required, during the period during which advances may be made under this subsection, to subscribe for stock in the Federal Home Loan Bank or to deposit such stock as collateral security as required in section 10), but such institution shall be required to keep on deposit such security, in addition to home mortgages, for such advances, as the board shall determine, which shall equal in value 1 per centum of the aggregate unpaid principal of such institution's home mortgage loans (but not less than $500). No advance to any such institution shall be made under

authority of this subsection after the State in which the institution is organized enacts legislation authorizing such institution to subscribe for Federal Home Loan Bank stock or after the expiration of the next regular session of the legislature of such State begun after the enactment of this Act, whichever is earlier. If, at the end of such time, such institution is not authorized to subscribe for stock, the bank shall proceed to liquidate the indebtedness of such institution to the bank and to terminate its relations with such institution. No advance shall be made under authority of this subsection which matures more than one year after the advance is made, but the bank may renew any such advance for yearly periods, or less, thereafter. The maturity of no advance authorized under this subsection shall be later than the time of the enactment of legislation authorizing such institution to become a member or the expiration of such session of the legislature of the State, whichever is earlier.

(f) The Secretary of the Treasury shall subscribe, on behalf of the United States, for such part of the minimum capital of each Federal Home Loan Bank as is not subscribed for by members under subsection (c) of this section within thirty days after books have been opened for stock subscriptions as provided in subsection (a). Payments for stock subscriptions by the Secretary of the Treasury shall be subject to call in whole or in part by the board, with the approval of the Secretary of the Treasury, at such time or times as may be deemed advisable. Each Federal Home Loan Bank receiving such payments shall issue receipts

therefor to the Secretary of the Treasury, and such receipts shall be evidence of the stock ownership of the United States. The aggregate amount expended by the United States for the purchase of stock under this Act shall not exceed $125,000,000. The Reconstruction Finance Corporation Act, approved January 22, 1932, is amended by adding at the end of section 2 thereof the following new paragraph:

"In order to enable the Secretary of the Treasury to make payments upon stock of the Federal Home Loan Banks subscribed for by him in accordance with the Federal Home Loan Bank Act, the sum of $125,000,000, or so much thereof as may be necessary for such purpose, is hereby allocated and made available to the Secretary of the Treasury out of the capital of the corporation and/or the proceeds of notes, debentures, bonds, and other obligations issued by the corporation. For the purposes of this paragraph, the corporation shall issue such notes, bonds, debentures, and other obligations as may be necessary."

(g) After the amount of capital of a Federal Home Loan Bank paid in by members equals the amount paid in by the Secretary of the Treasury under subsection (f), such bank shall apply annually to the payment and retirement of the shares of the capital stock held by the United States, 50 per centum of all sums thereafter paid in as capital until all such capital stock held by the United States is retired at par. Stock held by the United States may at any time, in the discretion of the Federal Home Loan Bank, and with the approval of the board, be paid off at par and retired

in whole or in part; and the board may at any time require such stock to be paid off at par and retired in whole or in part if in the opinion of the board the Federal Home Loan Bank has resources available therefor: *Provided,* That accumulated dividends, as provided in subsection (k), have been paid.

(h) Stock subscribed for otherwise than by the United States, and the right to the proceeds thereof, shall not be transferred or hypothecated except as hereinafter provided and the certificates therefor shall so state.

(i) Any member may withdraw from membership in a Federal Home Loan Bank six months after filing with the board written notice of intention so to do, and the board may, after hearing, remove any member from membership, or deprive any nonmember borrower of the privilege of obtaining further advances, if, in the opinion of the board, such member or nonmember borrower has failed to comply with any provision of this Act or the regulations of the board made pursuant thereto or if, in the opinion of the board, such member or nonmember borrower is insolvent. In any such case, the indebtedness of such member or nonmember borrower to the Federal Home Loan Bank shall be liquidated, and the capital stock in the Federal Home Loan Bank owned by such member shall be surrendered and canceled. Upon the liquidation of such indebtedness such member or nonmember borrower shall be entitled to the return of its collateral, and, upon surrender and cancellation of such capital stock, the member shall receive a sum equal to its cash

paid subscriptions for the capital stock surrendered, except that if at any time the board finds that the paid-in capital of a Federal Home Loan Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held, the Federal Home Loan Bank shall on the order of the board withhold from the amount to be paid in retirement of the stock a pro rata share of the amount of such impairment as determined by the board.

(j) A Federal Home Loan Bank may, with the approval of the board, permit the disposal of stock to another member, or to an institution eligible to become a member, but only to enable such an institution to become a member.

(k) All stock of any Federal Home Loan Bank shall share in dividend distributions without preference.

(l) Within one year after June 27, 1950, each member of each Federal Home Loan Bank shall acquire and hold and thereafter maintain its stock holding in an amount equal to at least 2 per centum of the aggregate of the unpaid principal of such member's home mortgage loans, home-purchase contracts, and similar obligations, but not less than $500. Such stock in excess of the amount hereby required may be purchased from time to time by members and may be retired from time to time as heretofore. One year after June 27, 1950, each Federal Home Loan Bank shall retire and pay off at par an amount of its stock held by the Secretary of the Treasury equivalent to the amount of its stock held by its members in excess

of the amount required to be held by them by the first two sentences of subsection (c) of this section immediately prior to June 27, 1950, and annually thereafter each Federal Home Loan Bank shall retire an amount of such Government stock equivalent to 50 per centum of the net increase of its stock held by members since the last previous retirement: *Provided,* That none of such Government capital shall at any time be retired so as to reduce the aggregate capital stock, reserves, surplus, and undivided profits of the Federal Home Loan Banks to less than $200,000,000: *Provided further,* That notwithstanding any provision of this subsection, nothing in this subsection shall limit or affect the operation of subsection (g) of this section. (12 U.S.C. 1426.)

SEC. 7. (a) The management of each Federal Home Loan Bank shall be vested in a board of twelve directors, all of whom shall be citizens of the United States and bona fide residents of the district in which such bank is located.

(b) Four of such directors shall be appointed by the Board and shall hold office for terms of four years; except that the terms of office of the two such directors heretofore appointed shall expire at the end of the calendar years 1936 and 1937, respectively, and the terms of office of the first two such directors hereafter appointed shall expire at the end of the calendar years 1938 and 1939, respectively.

(c) Six of such directors, two of whom shall be known as class A directors, two of whom shall be

known as class B directors, and two of whom shall be known as class C directors, shall be elected as provided in subsection (e), and shall hold office for terms of two years; except that the terms of office of the directors heretofore elected or appointed shall expire at the end of the terms for which they were elected or appointed.

(d) Two of such directors shall be elected by the members of the Federal Home Loan Bank without regard to classes under rules and regulations to be prescribed by the Board, and shall hold office for terms of two years; except that the term of office of one of the directors first elected under this subsection shall expire at the end of the calendar year 1936.

(e) The board shall divide all the members of each Federal Home Loan Bank into three groups which shall be designated as groups A, B, and C, which groups shall represent, respectively, and as fairly as may be, group A, the large, group B, the medium-sized, and group C, the small members, the size of such members to be determined according to the aggregate unpaid principal of the member's home mortgage loans. The board may revise the membership of such groups from time to time. Of the directors elected as hereinafter provided, each class A director shall be an officer or director of a member in group A, each class B director shall be an officer or director of a member in group B, and each class C director shall be an officer or director of a member in group C. Each member shall be entitled to nominate suitably qualified persons for election as directors of the class corresponding to

the group to which such member belongs, and shall cast one vote for each director in its class. The directors of each class shall be nominated and elected in accordance with such rules and regulations as may be prescribed by the board.

(f) Any director appointed or elected as provided in this section to fill a vacancy shall hold office only until the expiration of the term of his predecessor.

(g) The board shall designate one of the directors of each bank to be chairman, and one to be vice chairman, of the board of directors of such bank.

(h) If at any time when nominations are required, members shall hold less than $1,000,000 of the capital stock of the Federal Home Loan Bank, the board shall appoint a director or directors to fill the place or places for which such nominations are required. A director so appointed shall serve until the expiration of the calendar year during which he takes office.

(i) Each bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, in accordance with the resolutions adopted by such directors, subject to the approval of the board.

(j) Such board of directors shall administer the affairs of the bank fairly and impartially and without discrimination in favor of or against any member or nonmember borrower, and shall, subject to the provisions hereof, extend to each institution authorized to secure advances such advances as may be made safely and reasonably with due regard for the claims and

demands of other institutions, and with due regard to the maintenance of adequate credit standing for the Federal Home Loan Bank and its obligations. (12 U.S.C. 1427.)

* * * * * * *

SEC. 11. (a) Each Federal Home Loan Bank shall have power, subject to rules and regulations prescribed by the board to borrow and give security therefor and to pay interest thereon, to issue debentures, bonds, or other obligations upon such terms and conditions as the board may approve, and to do all things necessary for carrying out the provisions of this Act and all things incident thereto.

(b) The board may issue consolidated Federal Home Loan Bank debentures which shall be the joint and several obligations of all Federal Home Loan Banks organized and existing under this Act, in order to provide funds for any such bank or banks, and such debentures shall be issued upon such terms and conditions as the board may prescribe. No such debentures shall be issued at any time if any of the assets of any Federal Home Loan Bank are pledged to secure any debts or subject to any lien, and neither the board nor any Federal Home Loan Bank shall have power to pledge any of the assets of any Federal Home Loan Bank, or voluntarily to permit any lien to attach to the same while any of such debentures so issued are outstanding. The debentures issued under this section and outstanding shall at no time exceed five times the total paid-in capital of all the Federal Home Loan Banks as of the time of the issue of such

debentures. It shall be the duty of the board not to issue debentures under this section in excess of the notes or obligations of member institutions held and secured under section 10 (a) of this Act by all the Federal Home Loan Banks.

(c) At any time that no debentures are outstanding under this Act, or in order to refund all outstanding consolidated debentures issued under this section, the board may issue consolidated Federal Home Loan Bank bonds which shall be the joint and several obligations of all the Federal Home Loan Banks, and shall be secured and be issued upon such terms and conditions as the Board may prescribe.

(d) The board shall have full power to require any Federal Home Loan Bank to deposit additional collateral or to make substitutions of collateral or to adjust equities between the Federal Home Loan Banks.

(e) Each Federal Home Loan Bank shall have power to accept deposits made by members of such bank or by any other Federal Home Loan Bank or other instrumentality of the United States, upon such terms and conditions as the board may prescribe, but no Federal Home Loan Bank shall transact any banking or other business not authorized by this Act.

(f) The Board is authorized and empowered to permit, or whenever in the judgment of at least four members of the board an emergency exists requiring such action, to require, Federal Home Loan Banks, upon such terms and conditions as the board may prescribe, to rediscount the discounted notes of members

held by other Federal Home Loan Banks, or to make loans to, or make deposits with, such other Federal Home Loan Banks, or to purchase any bonds or debentures issued under this section.

(g) Each Federal Home Loan Bank shall at all times have an amount equal to the sums paid in on outstanding capital subscriptions of its members, plus an amount equal to the current deposits received from its members, invested in (1) obligations of the United States, (2) deposits in banks or trust companies, (3) advances with a maturity of not to exceed one year which are made to members or nonmember borrowers upon such terms and conditions as the board may prescribe, and (4) advances with a maturity of not to exceed one year which are made to members or nonmember borrowers whose creditor liabilities (not including advances from the Federal Home Loan Bank) do not exceed 5 per centum of their net assets, and which may be made without the security of home mortgages or other security, upon such terms and conditions as the board may prescribe.

(h) Such part of the assets of each Federal Home Loan Bank (except reserves and amounts provided for in subsection (i)) as are not required for advances to members or nonmember borrowers, may be invested, to such extent as the bank may deem desirable and subject to such regulations, restrictions, and limitations as may be prescribed by the board, in obligations of the United States and in such securities as fiduciary and trust funds may be invested in under the laws of

the State in which the Federal Home Loan Bank is located. (12 U.S.C. 1431.)

SEC. 12. The directors of each Federal Home Loan Bank shall, in accordance with such rules and regulations as the board may prescribe, make and file with the board at the earliest practicable date after the establishment of such bank, an organization certificate which shall contain such information as the board may require. Upon the making and filing of such organization certificate with the board, such bank shall become, as of the date of the execution of its organization certificate, a body corporate, and as such and in its name as designated by the board it shall have power to adopt, alter, and use a corporate seal; to make contracts; to purchase or lease and hold or dispose of such real estate as may be necessary or convenient for the transaction of its business, but no bank building shall be bought or erected to house any such bank, nor shall any such bank make any lease for such purpose which has a term of more than ten years; to sue and be sued, to complain, and to defend, in any court of competent jurisdiction, State or Federal; to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of its business, subject to the approval of the board; to define their duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and, by its board of directors, to prescribe, amend, and repeal by-laws, rules and regulations governing the manner in which its affairs may be admin-

istered; and the powers granted to it by law may be exercised and enjoyed subject to the approval of the board. The president of a Federal Home Loan Bank may also be a member of the board of directors thereof, but no other officer, employee, attorney, or agent of such bank, who receives compensation, may be a member of the board of directors. Each such bank shall have all such incidental powers, not inconsistent with the provisions of this Act, as are customary and usual in corporations generally. (12 U.S.C. 1432.)

Exemption from Taxation

Sec. 13. Any and all notes, debentures, bonds, and other such obligations issued by any bank, and consolidated Federal Home Loan Bank bonds and debentures, shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The bank, including its franchise, its capital, reserves, and surplus, its advances, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The notes, debentures, and bonds issued by any bank, with un-

earned coupons attached, shall be accepted at par by such bank in payment of or as a credit against the obligation of any home-owner debtor of such bank. (12 U.S.C. 1433.)

SEC. 14. When designated for that purpose by the Secretary of the Treasury, each Federal Home Loan Bank shall be a depositary of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and it may also be employed as a financial agent of the Government; and it shall perform all such reasonable duties as depositary of public money and financial agent of the Government as may be required of it. (12 U.S.C. 1434.)

SEC. 15. Obligations of the Federal Home Loan Banks issued with the approval of the board under this Act shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. The Federal reserve banks are authorized to act as depositaries, custodians, and/or fiscal agents for Federal Home Loan Banks in the general performance of their powers under this Act. All obligations of Federal Home Loan Banks shall plainly state that such obligations are not obligations of the United States and are not guaranteed by the United States.

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FEDERAL HOME LOAN BANK BOARD

SEC. 17. For the purposes of this Act there shall be a board, to be known as the "Federal Home Loan Bank Board", which shall consist of five citizens of the United States appointed by the President of the United States, by and with the advice and consent of the Senate. Not more than three members of the board shall be members of the same political party. Each member shall devote his entire time to the business of the board. Before entering upon his duties each of the members shall take an oath faithfully to discharge the duties of his office. The President of the United States shall designate one of the members of the board to serve for a term of two years, one for three years, one for four years, one for five years, and one for six years from the date of the enactment hereof, and thereafter the term of each member shall be six years from the date of the expiration of the term for which his predecessor was appointed. Whenever a vacancy shall occur among the members the person appointed to fill such vacancy shall hold office for the unexpired portion of the term of the member whose place he is selected to fill. Each of the members of the board shall receive a salary at the rate of $10,000 per annum: *Provided,* That during the fiscal year 1933 the salary shall be $9,000 per annum. The President shall designate one of the members as chairman of the board. The chairman shall be the chief executive officer of the board and in his absence or disability the duties of his office shall be performed by some one of

the other members to be designated as acting chairman by the chairman in such order as he may determine. The board shall supervise the Federal Home Loan Banks created by this Act, shall perform the other duties specifically prescribed by this Act, and shall have power to adopt, amend, and require the observance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of the provisions of this Act. The board shall have power to suspend or remove any director, officer, employee, or agent of any Federal Home Loan Bank, the cause of such suspension or removal to be communicated in writing forthwith to such director, officer, employee, or agent and to such Federal Home Loan Bank. (12 U.S.C. 1437.)

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SEC. 25. Each Federal Home Loan Bank shall have succession until dissolved by the board under this Act or by further Act of Congress. (12 U.S.C. 1445.)

SEC. 26. Whenever the board finds that the efficient and economical accomplishment of the purposes of this Act will be aided by such action, and in accordance with such rules, regulations, and orders as the board may prescribe, any Federal Home Loan Bank may be liquidated or reorganized, and its stock paid off and retired in whole or in part in connection therewith after paying or making provision for the payment of its liabilities. In the case of any such liquidation or reorganization, any other Federal Home Loan Bank may, with the approval of the board, acquire

assets of any such liquidated or reorganized bank and assume liabilities thereof, in whole or in part. (12 U.S.C. 1446.)

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ORDERS OF HOME LOAN BANK BOARD (OR FEDERAL HOME LOAN BANK ADMINISTRATION)

FEDERAL HOME LOAN BANK ADMINISTRATION
Order No. 5082. Date March 29, 1946

WHEREAS, it has been and is hereby determined that the efficient and economical accomplishment of the purposes of the Federal Home Loan Bank Act, as amended, will be aided by the action contemplated herein; now, therefore,

IT IS HEREBY ORDERED That effective March 29, 1946, the Federal Home Loan Bank of Los Angeles shall be liquidated and reorganized and all assets and property of any kind or nature of such bank, including any unexpended amounts in approved and outstanding budgets and personnel but excluding officers and directors, are hereby transferred to the Federal Home Loan Bank of Portland and all the liabilities and obligations of such Federal Home Loan Bank of Los Angeles are to be assumed by the Federal Home Loan Bank of Portland and are hereby declared to be and become the liabilities and obligations of the Federal Home Loan Bank of Portland. The President of the Federal Home Loan Bank of Portland (hereinafter called Federal Home Loan Bank of San Francisco) is hereby authorized and directed to execute, issue or sign in the

name of the Federal Home Loan Bank of Los Angeles or in the name of the Federal Home Loan Bank of San Francisco as the successor and legal assignee of the assets, property, liabilities and obligations of the Federal Home Loan Bank of Los Angeles such instrument or instruments as may be necessary or advisable and to cancel, assign or otherwise dispose of in whole or in part, any lease under which the Federal Home Loan Bank of Los Angeles has been bound or committed. All members of the Federal Home Loan Bank of Los Angeles are to become members of the Federal Home Loan Bank of Portland and the Federal Home Loan Bank of Portland (hereinafter called Federal Home Loan Bank of San Francisco) is ordered and directed to issue appropriate evidences of the ownership of all of the stock formerly held by the Federal Home Loan Bank of Los Angeles including stock purchased and held on behalf of the U. S. Government. The charter of said Federal Home Loan Bank of Los Angeles is hereby canceled.

It Is Further Ordered and Directed That effective March 29, 1946, the said Federal Home Loan Bank of Portland shall move and is hereby moved to the city of San Francisco, California, and shall be known hereafter as the Federal Home Loan Bank of San Francisco. Subject to the Federal Home Loan Bank Act, as amended, and the charter and by-laws of the Federal Home Loan Bank of San Francisco, including right of dismissal, said bank shall have as its directors, officers, employees, attorneys, and agents the directors,

officers, employees, attorneys, and agents transferred, elected, designated, or appointed, to, by or for the Federal Home Loan Bank of Portland for the calendar year 1946 and shall operate under the charter and by-laws used by the Federal Home Loan Bank of Portland until duly changed.

It Is Further Order and Directed That effective March 29, 1946, and until changed by the Board of Directors of the Federal Home Loan Bank of San Francisco and approved by the Federal Home Loan Bank Administration, the said Federal Home Loan Bank of San Francisco shall maintain a branch of said bank in the cities of Portland, Oregon, and Los Angeles, California.

It Is Further Ordered and Directed That in order to provide for adequate representation of the states in the Federal Home Loan Bank of San Francisco region, effective August 1, 1946, the terms of all directors of said bank shall expire and that prior to July 1, 1946, a new election of directors shall be held. The terms of all officers of said bank shall expire upon the designation by the Board of Directors after August 1, 1946, of new officers and their approval by the Federal Home Loan Bank Administration. In such election and in future elections of the Federal Home Loan Bank of San Francisco the states of Nevada and Arizona shall constitute one state with the right of minimum representation to be alternated between each of said states within the rules and regulations and orders of the Federal Home Loan Bank System pro-

viding for a minimum representation from each state in a Federal Home Loan Bank district. On or before July 1, 1946, the Federal Home Loan Bank Administration shall appoint or reappoint four public-interest directors whose terms shall begin August 1, 1946, but shall end respectively December 31, 1946; December 31, 1947; December 31, 1948; and December 31, 1949.

It Is Further Ordered and Directed That the Federal Home Loan Bank of San Francisco shall take such other action subject to the approval of the Federal Home Loan Bank Administration as may be necessary or desirable for the effective operation of the Federal Home Loan Bank of San Francisco.

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on March 29, 1946.

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Secretary.

Federal Home Loan Bank Administration
Order No. 5083. Date March 29, 1946

Pursuant to Section 3 of the Federal Home Loan Bank Act, as amended, and the powers vested in me by law, the district of the Federal Home Loan Bank of Portland is readjusted and shall have added thereto the states of Arizona, California and Nevada, and the Territory of Hawaii.

The said Federal Home Loan Bank of Portland is moved to San Francisco and shall be known as the Federal Home Loan Bank of San Francisco.

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on March 29, 1946.

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Assistant Secretary.

FEDERAL HOME LOAN BANK ADMINISTRATION
Order No. 5084. Date March 29, 1946

Pursuant to Section 25 of the Federal Home Loan Bank Act, as amended, and the powers vested in me by law the Federal Home Loan Bank of Los Angeles is dissolved.

I hereby certify that the above is an order issued by the Federal Home Loan Bank Administration on March 29, 1946.

——— ———,
Assistant Secretary.